TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~331~~

THE FIRST NATIONAL BANK OF CLARION, PLAINTIFF IN ERROR,

vs.

JOSEPH B. JONES, ASSIGNEE OF WILLIAM BURNS, BANKRUPT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED JANUARY 15, 1872.

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a Among the roll' records, and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania may be found the following:

1 Circuit court of the U. S. for the west. dis't of Penn'a.

Geo. Shiras, jr.,

S. A. & W. S. Purviance; H. B. Swoope.

JOSEPH B. JONES, ASSIGNEE IN BANKRUPTCY of William Burns, *vs.* THE 1ST NATIONAL BANK OF CLARION. } No. 2. May term, 1869.

To HENRY SPROUL, *Clerk:*

Issue summons case, returnable to 1st Monday of February next ensuing.

GEORGE SHIRAS, JR.,
Plaintiff's Attorney.

Jan. 6th, 1869.

2 UNITED STATES,
Western District of Pennsylvania, sct:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon The First National Bank of Clarion, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United States, in and for the western district of Pennsylvania, in the third circuit, at a session of the same court to be holden at Pittsburgh, on the first Monday of February next, to answer to Joseph B. Jones, assignee in bankruptcy of William Burns; and have you then there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this sixth day of January, A. D. 1869, and in the 93rd year of the Independence of the said United States.

[SEAL.] H. SPROUL, *Clerk.*

3 (Indorsed:) Joseph B. Jones, assignee in bankruptcy of W'm Burns, vs. The 1st National Bank of Clarion. Summons.

January 9th, 1869, served the within writ on George W. Arnold, cashier of the First National Bank of Clarion, by a true and attested copy, at the banking-house, during office hours.

So ans.—

H. H. NEELY,
Dep'ty U. S. Marshal.

4 JOSEPH B. JONES, ASSIGNEE IN BANKruptcy of W. Burns, &c., *vs.* THE 1ST NATIONAL BANK OF CLARION. } No. 2. May term, 1866.

Circuit court of the U. S., western district of Penn'a.

The First National Bank of Clarion was summoned to answer Joseph B. Jones, assignee in bankruptcy of William Burns, surviving partner

of the firm of S. and W. Burns, of a plea of trespass on the case; and thereupon the said plaintiff, by Geo. Shiras, jr., his attorney complains for that, whereas, heretofore, on the 9th day of July, A. D. 1867, the said William Burns, being insolvent, with a view to give a preference to the said The 1st National Bank of Clarion, being then and there a creditor of the firm of S. and W. Burns, whereof he, the said William Burns, was the surviving partner, did execute and deliver unto the said bank a bond, with warrant to confess a judgment thereon against the said Burns for the sum of ten
5 thousand three hundred dollars; that the said bond was entered and judgment thereon confessed against the said Burns, on the 18th day of July, A. D. 1867, at number one hundred and thirty-two of September term, A. D. 1867, of the court of common pleas of Clarion County, in the State of Pennsylvania; and the said William Burns, being insolvent as aforesaid, and desiring to give a preference over his other creditors to the said The 1st National Bank of Clarion, procured a large amount of personal property belonging to said Burns, to wit: store-goods and lumber, to the value of twelve thousand dollars, then in the possession of the said Burns in the court of Clarion, to be seized on an execution sued out upon said judgment as aforesaid; and the said plaintiff further says that said execution was so proceeded with, that the said property so levied on was sold, and the proceeds thereof, to the amount of the said sum of ten thousand three hundred dol-
6 lars, were paid over unto and for the benefit of said The 1st National Bank of Clarion; and the said plaintiff further says, that the said The 1st National Bank of Clarion, accepted the said bond and warrant to confess judgment thereon as aforesaid, and received the proceeds of such execution, having reasonable cause to believe that said William Burns was insolvent, and that the said bond, judgment, execution, and payment, thereby received of their claim against said Burns, were made in fraud of the provisions of the act of Congress, approved the 2nd day of March, A. D. 1867, and known as the bankrupt law; and the said plaintiff further says that, afterwards, to wit, on the 30th day of July, in 1867, and within four months from the giving of said bond and warrant of attorney by said Burns unto the said defendant, as aforesaid, the said William Burns filed his petition in the district court of the United States for the western district of
7 Pennsylvania, wherein and whereby the said Burns alleges that he was insolvent and unable to pay his debts, and prayed to be adjudged a bankrupt; and the said plaintiff further says that, thereupon the said William Burns was duly adjudged a bankrupt, and this plaintiff duly appointed his assignee, on the 11th day of Nov'r, 1867; that a large number of creditors have proved claims to a large amount against the said Burns; that the said plaintiff, in pursuance of the provisions of the said act of Congress, hath demanded from the said defendant the value of the said property so as aforesaid levied on and sold by the said defendant in fraud of the provisions of the said act, yet the said defendant hath not yet delivered unto the said plaintiff the said goods or the value thereof, but so to do hath and still doth wholly refuse, to the damage of the plaintiff of fifteen thousand dollars, to recover which & costs he brings this suit; and the said plaintiff further
8 complains for that, whereas, heretofore, to wit, on the 9th day of July, A. D. 1867, one William Burns, in contemplation of insolvency, and with a view to give a preference to the defendant, as one of his creditors, the said defendant having reasonable cause to believe that said Burns was insolvent, executed and delivered unto the said defend-

ant a judgment-bond for the sum of ten thousand three hundred dollars, with the design of thereby enabling the said defendant to seize, on execution, certain personal property of said Burns, and procuring and receiving payment thereby of defendant's said claim against said Burns; and the said plaintiff further say, that said judgment was, on the 18th day of July, 1867, at No. 132, September term, 1867, of the court of common pleas of Clarion County, in said district, entered against said Burns; that process was issued thereon and a large amount of the property, to wit, store-goods and lumber, belonging to said defendant,
9 were seized upon, sold, and the proceeds thereof received by said defendant on account of defendant's said claim against said; and defendant further says that, afterwards, to wit, on the 30th day of July, 1867, and within the space of four months from and after the said Burns had procured his said property to be seized as aforesaid on execution, he, the said Burns, filed his petition in bankruptcy and was duly adjudged a bankrupt, and this plaintiff duly appointed his assignee; that it has become the duty of this assignee, under the provisions of the act of Congress, approved March 2nd, 1867, and commonly known as the bankrupt act, to recover from said defendant for the benefit of the other creditors of the said Burns, the said property so as aforesaid seized and sold on execution, or the value thereof from the said defendant, yet the said defendant, though often requested, hath not yielded up or paid the amount, or any portion thereof, but so to do hath and doth wholly
10 refuse, to the damage of the plaintiff of fifteen thousand dollars, to recover which and costs he brings this suit.

GEO. SHIRAS, JR.,
P'ff's Att'y.

11 J. B. JONES, ASSIGNEE OF BURNS, *vs.* THE 1ST NAT. BANK OF CLARION. } No. 2. May term, 1869, C. C. W. D. of Pa.

And now, to wit, March 10, 1869, the defendant, by S. A. & W. S. Purviance, their attorneys, come and defend the wrong and injury in plaintiff's declaration complained of, and say that this court ought not to have or take cognizance of the action aforesaid, because they say the supposed causes of action, if any such exist, accrued out of and beyond the jurisdiction of this court, to wit, in the county of Clarion, State of Pensylvania.

And the defendants, by their attorneys, further say that this court ought not to have or take further cognizance of this action, because they say the plaintiff and the plaintiff's assignee are citizens of Penn'a, and of the western district thereof, and the defendants are a corporation by the laws of the U. S., and *being* their chief place of business, and doing business in the said State of Penn'a, in the western district thereof, to wit, in the county of Clarion.

And all this the said defendant is ready to verify, wherefore they
12 pray judgment whether this court can or will take further cognizance of the action aforesaid.

S. A. & W. S. PURVIANCE,
Att'ys for Def't.

UNITED STATES, *West Dis't of Pa., ss:*

Before me, H. Sproul, clerk of circuit court for the western district of Penn'a, this 30th April, 1869, came W. S. Purviance, of counsel

for def't and agent in their behalf for this purpose, who, being sworn, saith the above plea is not interposed for the purpose of delay.

W. S. PURVIANCE.

Sworn & subscribed before me this 30th April, 1869.

H. SPROUL, *Cl'k.*

13 J. B. JONES, ASSIGNEE OF BURNS, *vs.* THE 1ST. NAT. BANK OF CLARION. } No. 2. May term, 1869.

And now, to wit, March 11th, 1869, the said defendant, by S. A. and W. S. Purviance, their att'ys, come and defend the wrong and injury complained of in pl'ff's declaration, and say that judgment should not be given against the defendants, because they deny that the said Burns did, on the 9th July, 1867, being insolvent, *was, or that being so, and* with intent to give a preferance to the defendant, one *other condition* of the said Burns, surviving, &c., give to the def'ts the note or bond, with warrant of att'y, to confess judgment, &c., or that the same, to wit, note or bond with form of att'y to confess judgment, was so received from said Burns, surviving, &c., with any such knowledge, intent, or on part of the defendant; that the said Burns afterwards procured a large lot, or any lot of his goods, as specified by pl'ff, or other goods
14 whatsoever, to be levied upon by def'ts under the judgment aforesaid, or execution thereon, or under any execution or any judgment whatsoever, and to be sold and proceeds thereof applied to def'd't's said judgment, in fraud of other creditors, and of the provisions of the act of Congress, entitled "An act providing for a uniform system of bankruptcy throughout the U. S," or with a view *with* a preference of creditors in favor of the defendant; that the defendant received, and the said Burns gave said note or bond with a view to give defendant a preference or to defraud other creditors by said defendant, having reasonable cause to believe said Burns surviving, &c., insolvent, or in contemplation of insolvency, and with design to enable defendant to seize and levy upon the personal and real property of Burns, or in fraud of the act of Congress herein above refer'ed to, or that it was so received by defendant, or that defendant had reasonable cause to believe
15 the said Burns serviving, &c, was insolvent, and that the assignee of said Burns has ever made demand back from the defendant, which is alleged in plaintiff's decleration; and, on the contrary thereof, the defendants aver and al'edge that they received the said note from said Burns, entered the same, and issued upon the same, without any knowledge or suspection that the said Burns was insolvent or in danger of insolvency, and without any collusion with him to defraud other creditors, or give the defendant a preference, and without any intent to offend against the provisions of the act of Congress hereinbefore refer'ed to, whatsoever; and in this con'ection defendants aver and alledge that the levy made by them was done against the Burns property, without his knowledge and against his wishes; and that after said levey was made the sale was made of the goods levied upon, in the face of a steady oppisition from the said Burns; and the
16 said defendants further deny that they assumed or are liable to the plaintiff in the manner and form as charged by pl'ff in this suit, or in any way whatsoever, or that the pl'ff has any cause of action against them; and of this the defendants put themselves upon the country.

S. A. & W. S. PURVIANCE,
Att'ys for Def'ts.

17 JOSEPH B. JONES, ASSIGNEE OF BURNS,
vs.
THE 1ST NATIONAL BANK OF CLARION. } No. 2. May term, 1869.

And now, to wit, Nov. 21, 1870, plaintiff has leave to amend the ad damnum clause in the said counts of this declaration, by substituting the amount of "thirty thousand dollars" for "fifteen thousand dollars."

Amendment allowed.

Per curiam.

18 JOSEPH B. JONES, ASSIGNEE IN BANKRUPTCY of W. Burns & Co.,
vs.
THE 1ST NATIONAL BANK OF CLARION County. } No. 2. May term, 1869.

Amended narr. and additional counts on behalf of plaintiff.

Western dist. of Penn'a.

And the said plaintiff further complains, for that whereas, heretofore, to wit, on the 9th day of July, A. D. 1867, the said William Burns, being insolvent, with a view to give a preference to the said The 1st National Bank of Clarion, being then and there a credetor of the firm of S. and W. Burns, whereof he, the said William Burns, was the surviving partner, did execute and deliver unto the said bank a bond with warrant to confess a judgment thereon against the said Burns for the sum of ten thousand three hundred dollars; that the said bond was entered and judgment thereon confessed against the said Burns, on the 18th day of July, A. D. 1867, at No. 132, September term, A. D. 1867, of the
19 court of common pleas of Clarion County, and the said judgment and proceedings aforesaid were so proceeded in that on the 18th July, A. D. 1867, an exemplifi. of said judgment from the records of Clarion County court of common pleas was duly entered to No. 185, May term, in the court of common pleas of the county of Jefferson; and the said William Burns, being insolvent as aforesaid, and with the intent to give a preference over his other creditors to the said The 1st National Bank of Clarion, suffered or procured process to be issued on said mentioned record in the court of Jefferson County, and thereupon a large amount of the property of William Burns was seized upon, to wit, the stock of his store and lumber, sold, and the proceeds thereof received by the said First National Bank, the defendant in this suit, on account of defendant's said claim against said William Burns; and the said plaintiff further says that the said The 1st National Bank of Clarion accepted the said bond and warrant to confess judgment
20 thereon as aforesaid, and received the proceeds of such execution, having reasonable cause to believe that said William Burns was insolvent, and that the said bond, judgment, exemplification, execution and payment thereby received, of their claim against said Burns, was made in fraud of the provisions of the act of Congress, approved the 2nd day of March, A. D. 1867, known as the bankrupt act; and plaintiff further says that, afterwards, to wit, on the 30th day of July, 1867, and within the space of four months from and after the said Burns had procured or suffered his said property to be seized in execution, he, the said Burns, filed his petition in bankruptcy and was duly adjudicated a bankrupt, and this plaintiff duly appointed his assignee.

That it has become the duty of this plaintiff, as assignee, under the provisions of the act of Congress, approved March 2nd, 1867, commonly known as the bankrupt act, to recover from said defendant, for
21 the benefit of the other creditors of the said Burns, the said property, so as aforesaid seized and sold on execution, or the value thereof, from the said defendant; yet the said defendant, although often requested, hath not yielded up or paid the said amount or any portion thereof, but so to do hath and doth wholly refuse, to the damage of the plaintiff thirty thousand dollars, to recover which and costs he brings this suit, &c.

GEORGE SHIRAS, JR.
KERR & PATTERSON,
Pl'ff's Att'ys.

Filed by leave of court this Nov. 28, 1870.
H. D. GAMBLE, *Clerk.*

22 J. B. JONES, ASSIGNEE OF BURNS, *vs.* THE 1ST NAT'L BANK OF CLARION. } No. 2. May term, 1869. C. C. W. D. of Pa.

And now, to wit, March 10th, 1869, the defendant, by S. A. & W. S. Purviance, their attorneys, comes and defend' the wrong and injury in plaintiff's declaration complained of, and say that this court ought not to have or take further cognizance of the action aforesaid; because, they say, the supposes causes of action, of any such exist, occur'ed out of and beyond the jurisdiction of this court, to wit, in the county of Clarion, State of Pennsylvania; and the defendants, by there atty's, further say that this court ought not to have or take further cognizance of the action, because they say the pl'ff and the plff's assignee are citizens of Pennsylvania, and of the western district thereof, and the defendants are a corporation by the laws of the U. S., but *being* their chief place of business and doing business in the said State of Penn'a, in the western district thereof, to wit, in the county of Clarion.
23 And all this the said defendant is ready to verify, wherefor' they pray judgment whether this court can or will take further cognizance of the action aforesaid.

S. A. & W. S. PURVIANCE,
Atty's for Def'ts.

U. S. A., *W. D. of Pa., ss:*

Before me, H. D. Gamble, deputy cl'k, C. C. W. D. of Pa., this 30th April, 1869, came W. S. Purviance, of counsel for def'd't & agent in their behalf for the purpose, who, being sworn, saith the above plea is *but* interposed far from of delay.

W. S. PURVIANCE.

Sworn & subscribed before me this 30th April, 1869.

24 J. B. JONES, ASSIGNEE OF BURNS, *vs.* THE 1ST NATIONAL BANK OF CLARION. } No. 2. May term, 1869.

And now, to wit, March 11, 1869, the said defendants, by S. A. & W. S. Purviance, their att'ys, come and defend the wrong and injury complained of in pl'ff's declaration, and say that judgment should not be

given against the defendants, because they *say* that the said Burns did, on the 9th day of July, 1867, being insolvent, and with intent to give a preference to the defendant, one of the creditors of the said Burns, surviving, &c., give to the defendants the note or bond with warrant of att'y to confess judgment, &c., or that the same, to wit, note or bond, with power of att'y to confess judgment, was so received from said Burns, surviving, &c., with any such knowledge, intent, or purpose on part of the defendant; that the said Burns afterwards procured a large lot or any lot of his goods, as specified by pl'ff, or other goods whatsoever to be levied upon by def't under the judgment aforesaid & execution thereon, or under any execution or any judgment whatsoever, and to be sold, and the proceeds thereof applied to defendant's said
25 judgment in fraud of other creditors, and of the provisions of the act of Congress entitled an act providing for a uniform system of bankruptcy throughout the United States, or with a view to a preference of creditors in favor of the defendant; that the defendant received and the said Burns gave said note or bond with a view to give defendant a preference or to defraud other creditors, or in fraud of the act of Congress hereinabove referred to, in that it was so received by defendant, and that defendant had reasonable cause to believe that said Burns, surviving, &c., was insolvent, or that the assignee of said Burns has ever made demand back from the defendants which is alleged in pl'ff's declaration; and, on the contrary thereof, the defendants aver and allege that they received the said note from said Burns, entered the same, issued upon the same without any knowledge or suspicion the said Burns was insolvent or in danger of insolvency, and without any collusion with him to defraud other creditors, or give the defendants a preference, and without any intent to offend against the provisions of the act of Congress hereinbefore referred to whatever; and in this connection def'ts aver and allege that the levy made by them was done
26 against the Burns property without his knowledge, and against his wishes; and that after said levy was made the sale was made of the goods levied upon in the face of a strong opposition from the said Burns.

And the said defendants further deny that they ever assumed or were liable to the plaintiff in the manner and form as charged by plaintiff in this suit, or in way whatsoever, or that the pl'ff has any cause of action against them; and of this the defendants put themselves upon the country.

S. A. & W. S. PURVIANCE,
Def'ts Att'ys.

27 J. B. JONES, ASSIGNEE IN BANKRUPTCY,
vs.
THE FIRST NATIONAL BANK OF CLARION, PENN'A. } No. 2. May term, 1869.

Circuit court U. S., W. D. of P'a.

And now, to wit, November 29th, 1870, comes the defendant, by its attorneys, H. B. Swoope & S. A. & W. S. Purviance, and to the original and amended declaration of pl'ff's in the case filed, in addition to the pleas heretofore filed, files the following, and defends the wrong and injury, when, &c., and says that the said defendant is not guilty of the said supposed gr'evainces above laid to his charge, in manner and form as the

above plaintiff *both* above thereof complained against it, because the said defendant saith that it, the said bank, defendant, denies, that on the 9th day of July, A. D. 1867, the said W'm Barnes, or W'm Barns, surviving partners of S. & W. Barns, was insolvent, or that then the said W'm Burns, or W'm Barns, surviving partner of S. & W. Burns, with a view to give a preference to the said 1st Nat'l Bank of Clarion,
28 defendant, (who, it is admitted, was a creditor of the said W'm Burns, surviving partner of S. & W. Burns, to a large amount at said times, to wit, to the sum of seventeen thousand dollars and upwards,) did execute and deliver unto the defendant a bond or note with warrant of attorney to confess judgment thereon against the said Burns for the sum of ten thousand three hundred dollars; and defendant denies that a bond or note for the amount of ten thousand three hundred dollars, was entered a judgment thereon, by virtue of the power of att'y therein contained, confessed against the said Burns surviving, on the 18th day of July, A. D. 1867, at No. 132, Sept. term, A. D. 1867, of the court of common pleas of Clarion County, Penn'a, and the said judgment and proceedings aforesaid, so proceeded in that, on the 18th day of July, A. D. 1867, an exemplification of said judgment from the records of Clarion County court of common pleas, was duly entered to No. 185, May term, 1867, in the court of common pleas of Jefferson County; and the defendant wholly denies that the said W'm
29 Burns, or W'm Burns, surviving, was, or being insolvent, and with the intent of giving a preference *to* his other creditors to the said The 1st National Bank of Clarion, suffered or procured process to be issued on said mentioned writ, in the court of common pleas of Jefferson County, and that thereupon a large amount of the property of W'm Burns, or W'm Burns, surviving, &c., was seized upon, to wit, the stock of his lumber and store, and the proceeds thereof received by the said First National Bank, on account of the indebtedness it had against the said W'm Burns, or W'm Burns, surviving, &c; and the defendants further deny that the said 1st Nat. Bank of Clarion accepted the said bond and warrant to confess judgment therein as aforesaid, and received the proceeds of such execution, having reasonable cause to believe that said W'm Burns, &c., was insolvent, or in contemplation of insolvency, and that said bond, judgment, execution, and payment thereby received of their claim against said Burns, was made in fraud of the provisions of the act of Congress, approved the 2nd day of March, A. D. 1867, & known as the bankrupt law; and denying the appointment
30 of said J. B. Jones, as assignee in bankruptcy of said W'm Burns, surviving, &c., the defendant denies that it became, or was, or is, the duty of the said J. B. Jones to recover, or ende'vor to recover, or his right thereto, the said property, (so as aforesaid seized and held, as is alleged by pl'ff in his declaration,) or the value thereof, from the defendants, because, as the defendant saith, if any property, *or the value thereof*, the said W. Burns, or W'm Burns, surviving, &c., was seized and sold, *as* the proceeds thereof, received by the defendant, it was so done honestly and fairly, and *are* in controvention of the terms of the act of Congress passed 2 March, A. D. 1867, and designated "An act to establish a uniform system of bankruptcy throughout the United States, or of any law of the U. S., or of State of Penn'a, but, on the contrary thereof, in accordance with, and under the laws of, both the U. S. and the State of Penn'a; and defendant wholly denies that any such demand or claim for the repayment of said moneys, or the return of said goods, or the value thereof, as is alleged in pl'ff's original or
31 amended declaration, hath ever been made of defendant, as is in such declaration and amended declaration set forth & aver'ed.

And of this the said The First National Bank of Clarion puts itself upon the record.

S A. & W. S. PURVIANCE.
H. B. SWOOPE,
Att'ys for Defendant.

32 (Indorsed:) Filed by leave of court this 29th Nov'r, 1870. H. D. Gamble, clerk.

33 *Jury.*

J. B. JONES, ASSIGNEE,
v.
THE FIRST NATIONAL BANK OF CLARION. } No. 2. May term, 1869.

And, now, to wit, November 29th, 1870, the parties in this cause being at issue, a jury, being called, came, to wit, W. B. Brown, A. Beckert, R. F. Hollay, Josiah McPherrin, J. B. Vance, W'm H. Templeton, W'm A. Mickey, and J. G. Hackey, twelve good and lawful men, who, having been duly summoned and returned, were severally sworn to try this issue, and a true verdict render according to the evidence.

34 *Evidence.*

$5,000.] CORSICA, PA., *April 16th*, 1867.

Four months after date, we promise to pay, to the order of Graham & Thomas, five thousand dollars, at their office, 157 Liberty street, without defalcation, for value received.

S. &. W. BURNS.

No. .

35 [$2. 00 U. S. rev. stamp.] [50-c. U. S. rev. stamp.]

(Indorsed:) S. & W. Burns. $5,000. Aug. 6-9.

GRAHAM & THOMAS.
JAMES KENNEDY.

Pay Robert J. Stoney, cash., or order, for collection, on account of First National Bank, of Clarion, Pa.

G. W. ARNOLD, *Cash.*
ROB'T J. STONEY.

34 $5,000.] PITTSBURGH, *March 16th*, 1867.

Four months after date, we promise to pay, to the order of Graham & Thomas, five thousand dollars, at the office of Graham & Thomas, 157 Liberty st., without defalcation, for value received.

S. & W. BURNS.

No. ,
16-19 July.

35 [$2. 00 U. S. rev. stamp.] [50-c. U. S. rev. stamp.]

(Indorsed:) 8278. W. & S. Burns. $5,000. July 16-19.

GRAHAM & THOMAS.
JAMES KENNEDY.

Pay Rob't J. Stoney, cash., or order, for collection, on account of First National Bank, Clarion, Pa.

G. W. ARNOLD, *Cash.*
W. H. CASSIDY & CO.

36 $10,000.00.] CORSICA, *July 9th*, 1867.

One day after date, I promise to pay, to the order of the First National Bank of Clarion, ten thousand dollars, without defalcation, value received, with interest from date.

And I do hereby empower any attorney of any court of record within the United States, or elsewhere, to appear for me, and confess judgment against me as of any term, for above sum, with costs of suit, and 5 per cent., attorney's commission, and release of all errors; hereby waiving inquisition, and agreeing to the condemnation of any property that may be levied upon, by any execution, which may issue forthwith, on failure to comply with the conditions hereof; also, hereby waiving the benefit of the exemption-laws, or any act of assembly relative to executions, now in force, or hereafter to be passed.

Witness my hand and seal.

W. BURNS, [SEAL.]
Surviving Partner of the late Firm of S. & W. Burns.

37 [Five (5) $1.00 U. S. revenue stamps. July 9, '67. S. W. B.]

38 Among the records and proceedings of the court of common pleas of Clarion County, No. 132, September term, 1867, it is thus contained, to wit:

September term, 1867.

Wilson.

THE FIRST NATIONAL BANK, OF CLARION,
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } 132.

Debt, $10,000.00; att'y' commission, $300; int. from July, 10, 1867.
Tax, 50; fees, 75, p'd by pl'ff.
July 18. Exemplification to pl'ff, 1.50 p'd.
July 19. Exemplification to pl'ff, 1.50 p'd. E. D., No. 38, Dec. term, 1868. C. Judgment-dock., p'g. 22.

Defendant, by his attorney, Theo. S. Wilson, by warrant, duly constituted, appears and confesses a judgment against him, and in favor of the said plaintiff, for the sum of ten thousand dollars, with the sum of three hundred dollars, attorney's commission, in all the sum of ten thousand three hundred dollars, with costs of suit, with interest from July 10, 1867, release of errors, and waiving inquisition, and condemnation of real estate; also waiving stay of execution, and all laws now in force, or hereafter to be passed, exempting any property from levy, and sale under legal process.

Entered July 18, 1867.
Attest: C. REICHART, *Pro.*

39 SEPTEMBER 14TH, 1868.

Received of defendant, by Nathan Carrier, jr., sheriff of Jefferson County, nine thousand three hundred and fifty-nine dollars seventy-nine cents, the same being receipted in common pleas docket of said county, No. , Sept. term, 1867, exemplication of this judgment.

THEO. S. WILSON,
Att'y for Pl'ff.

Copy of judgment docket-entry.

Defendants.	Page.	Plaintiffs.	Date of entry.	Number and term.	Amount.
Burns, W., surviving partner of the late firm of S. & W. Burns.	66	First National Bank, of Clarion.	18 July, 1867...	No. 132. Sept. T., 1867. Int. from 10 July, " Costs.....	10,300 00 4 25

40 In the common pleas of Clarion County.

THE FIRST NATIONAL BANK OF CLARION *vs.* W. BURNS, SURVIVING PARTNER OF THE late firm of S. & W. Burns. } No. 132. September term, 1867.

CLARION COUNTY, *ss:*

The First National Bank of Clarion come into court, by Theo. S. Wilson, attorney, and complains of W. Burns, surviving partner of the late firm of S. & W. Burns, for that, whereas the said W. Burns, surviving partner of the late firm of S. & W. Burns, on the ninth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, at the county aforesaid, by a certain writing obligatory, by the said W. Burns, surviving partner of the late firm of S. & W. Burns, signed and sealed and stamped, and to the court now shown did acknowledge himself to be held and firmly bound unto the said First National Bank of Clarion, in the sum of ten thousand dollars, payable one day after the date thereof, without defalcation, value received, with interest from date.

And further did empower any attorney of any court of record within the United States or elsewhere, to appear for him and confess
41 judgment against him, as of any term, for above sum, with costs of suit and three per cent. attorney's commission, and release of all errors, waiving injunction, and agreeing to the condemnation of any property that may be levied upon by any execution which may issue forthwith, on failure to comply with the conditions thereof; also waiving the benefit of the exemption laws, or any act of assembly relative to executions now in force or hereafter to be passed.

THEO. S. WILSON,
Attorney for Plaintiff.

JULY 18TH, 1867.

CLARION COUNTY, *ss:*

By virtue of which power of attorney authorizing me thereto, I, Theo. S. Wilson, do appear for the said W. Burns, surviving partner of the late firm of S. & W. Burns, and confess a judgment against him, and in favor of the said plaintiff for the sum of ten thousand dollars, with the sum of three hundred dollars attorney's commission, all the sum of ten thousand three hundred dollars, with costs of suit, with interest from

July 10th, 1867, release of errors and waiving inquisition and condemnation of real estate, also waiving stay of execution and all laws
42 now in force or hereafter to be passed exempting any property from levy and sale under legal process.

THEO. S. WILSON,
Att'y for Defendant.

JULY 18, 1867.

In the common pleas of Clarion County.

THE FIRST NATIONAL BANK OF CLARION
vs.
WILLIAM BURNS, SURVIVING PARTNER OF the late firm of S. & W. Burns. } No. . Term, 1867.

Issue writ of fieri facias returnable to next term.
Dec. 1, 1868.

THEO. S. WILSON,
Att'y for Pl'ff.

To C. REICHART, *Prothonotary.*

43 CLARION COUNTY, *ss:*

[SEAL.] The commonwealth of Pennsylvania to the sheriff of the county of Clarion:

We command you, the said sheriff, that of the goods and chattles, lands and tenements of W. Burns, surviving partner of the late firm of S. & W. Burns, late of the county aforesaid, in your bailiwick, you cause to be levied and made as well *as* the sum of ten thousand three hundred dollars, lawful money of Pennsylvania, which the First National Bank of Clarion, lately in our court of common pleas, before our judges at Clarion, by the judgment of the same court recovered against him of debt, as also four dollars & twenty-five cents for its costs and charges by it about this suit in that behalf expended, whereof the said W. Burns, surviving partner of the late firm of S. & W. Burns, is convict, as appears of record, and have these monies before the judges of the same court in Clarion, at a court there to be held for the said county, the first Monday in December next, to render the said 1st National Bank
44 of Clarion for its debts, interest, costs, and charges aforesaid, and have you then and there this writ.

Witness the Honorable James Campbell, president of our said court, at Clarion, the 2nd day of December, in the year of our Lord, one thousand eight hundred and sixty-eight.

Attest:

C. REICHART, *Pro.*

DEC. 3, 1868.—By virtue of the within writ, I have levied on all the rights, title, interest, and claim of W'm Burns, surviving partner of the late firm of S. & W. Burns: No. 1. A tract or piece of land situated in Mill Creek Township, Clarion County, beginning at a post corner of Jesse Teat's land; thence, by lands of S. & W. Burns, north 175 perches, to a post; thence, by lands sold James J. Slater and H. Zogst, east 240 perches, to a post; thence, by land of H. Beer and S. &. W. Burns, south 175 perches, to a post; thence, by land of W'm H. Grady and lands of Jesse Teat, west 240 perches to the place of beginning, containing 262

acres, more or less. being same land sold by S. M. Fox to
45 S. & W. Burns, by deed dated December 8th, 1864, containing pine and other lumber.

Also, No. 2. A tract or piece of land, situated in Mill Creek Township aforesaid, beginning at a post; thence, by lands of S. & W. Burns, north 175 perches to a post, thence by land sold J. & J. Slater, west 105½ perches, to a post; thence, by other land now or late of said S. M. Fox, south 175 perches, to a post, corner of land sold Jesse Teats; thence by same, east 105½ perches to the place of beginning, containing 111 3/10 acres, more or less, being same land conveyed with another tract by S. M. Fox to S. & W. Burns, by deed dated Nov. 19th, 1863; said tract having pine lumber, &c.

Also, No. 3. A tract or piece of land situated in said township, beginning at a post, corner of land of W'm H. Grady; thence, by other land sold S. & W. Burns, north 115 8/10 perches, to a post; thence, by land sold H. Beer, east 108 1/10 perches, to a post; thence, by other land of S. M. Fox, south 115 8/10 perches, to a post; thence, by same and land sold H. B. McCanna, west 108 1/10 perches, to the place of beginning, containing 78 acres and 2/10 perches more or less, being same tract of land which S. M. Fox and wife, with another tract of land, conveyed
46 to S. & W. Burns, by deed dated Nov. 19th, 1868, containing pine and other lumber.

Also, No. 4. In said township, bounded on the east by Blake & Co., south by Love and others, west by White, Blake and Co., and north by Barr, containing 111 acres, partly cleared and under fence; also containing lumber.

So ans.—

H. H. NEELY, *Sh'ff.*

In the court of common pleas of Clarion County.

THE FIRST NATIONAL BANK OF CLARION } E. D. No. 38. Dec. term 1868.
vs.
W'M BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } No. 132. Sept. term 1867.

Issue writ of venditio*n*a exponas, returnable at next term.

THEO. S. WILSON,
For Plaintiff.

To C. REICHART, Esq.,
Prothonotary.

APRIL 5, 1869.

47 *Copy of entry in execution-docket.*

December term, 1868.

Wilson.	FIRST NATIONAL BANK OF CLARION *vs.* W'M BURNS, SURVIVING PARTNER OF S. & W. Burns	38.	Fi. fa. Dec. 2, 1868.	
			Debt	$10,000 00
			Att'y's commission	300 00
			Int. from July 10, 1867.	
	No. 132. Sept. tr. 1867.		Pro. Reichart	60
			Att'y tax & ent.	4 25
	Writ returned with levy on real estate.		Sat	20
	E. D. No. 50. May term, 1869.		Sh'ff Neely	1 25

48 May term, 1869.

Wilson.	FIRST NATIONAL BANK OF CLARION vs. WILLIAM BURNS, SURVIVING partner of the late firm of S. & W. Burns } 5. E. D., No. 38. Dec. t'r., 1868. May 1, 1869. After due and public notice, property cried and sold for $280. So ans. SH'FF NEELY.	Vend. exp's, 5 April, 1869. Debt..... $10, 000 00 Att'y's com..... 300 00 Pro. Richart..... 1 50 Att'ys tax & ent. 4 25 Sh'ff Neely..... 1 25 Sat..... 20	Received, May 1. 1869, of defendant, two hundred and thirty-eight dollars eighty-five cents, being the amount bid by plaintiff, on the real estate sold on this writ, less forty-one dollars fifteen cents, costs, paid by plaintiff. THEO. S. WILSON, *For Plaintiff.* Received of H. H. Neely att'y tax & ent. T. S. WILSON. Received of Sh'ff Neely $1. 50. C. REICHART.

49 CLARION COUNTY, *ss:*

[SEAL.] Commonwealth of Pennsylvania to the sheriff of the county of Clarion, greeting:

Whereas by our writ of fieri facias, bearing test the 2nd day of December, in the year of our Lord one thousand eight hundred and , we command you, that of the goods and chattles, lands and tenements of William Burns, surviving partner of the late firm of S. & W. Burns, in your baliwick, you should cause to be levied and made, as well the sum of ten thousand three hundred dollars, lawfnl money of Pennsylvania, which The First National Bank of Clarion, lately, before the judges of the court of common-pleas for the county aforesaid, by the judgment of the same court recovered against him of debt, as also six dollars and ten cents for its costs, whereof the aforesaid W'm Burns, late partner, is convict, &c., and that you should have these monies before the judges of the same court, at Clarion, at the court there to be held for the county of Clarion aforesaid, the first Monday in December next, to render to the said First National Bank of Clarion for
50 its debt, int., and costs recovered, as aforesaid, at which day, before our judges at Clarion, you returned; that, by virtue of said writ to you directed, you had seized and taken in execution: No. 1. All the right, title, and claim of W'm Burns, surviving partner of the late firm of S. & W. Burns, a tract or piece of land situated in Mill Creek Township, Clarion County, beginning at a post corner of Jesse Teat's land; thence, by lands of S. & W. Burns, north 175 perches, to a post; thence, by land sold J. & J. Slater and H. Sagst, east 240 perches, to a post; thence, by land of H. Beer and S. & W. Burns, south 145 perches, to a post; thence, by land of W'm H. Grady and lands of Jesse Teats, west 240 perches, to the place of beginning, containing 262 acres, more or less, being same land sold by S. M. Fox to S. & W. Burns, by deed dated Dec. 8, 1864, containing pine and other lumber. No. 2. Also, a tract or piece of land situated in Mill Creek Township aforesaid, beginning at a post; thence, by land of S. & W. Burns, north 175 perches, to a post; thence, by land sold J. & J. Slater, west 105½ perches, to a post; thence, by other land now or late of S. M. Fox, south
175 perches, to a post corner of land sold Jesse Teats; thence, by
51 same, east 105½ perches, to the place of beginning, containing 111 $\frac{3}{10}$ acres, more or less, being same land conveyed with another tract by S. M. Fox to S. & W. Burns, by deed dated Nov. 19, 1863, said

tract having pine lumber, &c. No. 3. Also, a tract or piece of land situated in said township, beginning at a post, corner of land of W'm H. Grady; thence, by other land sold S. & W. Burns, north 115 $\frac{8}{10}$ perches, to a post; thence, by land sold H. Beer, east 108 $\frac{1}{10}$ perches, to a post; thence, by other land of S. M. Fox, south 115 $\frac{8}{10}$ perches, to a post; thence, by same, and land sold H. B. McCanna, west 108 $\frac{1}{10}$ perches, to the place of beginning, containing 78 acres and $\frac{2}{10}$ perches, more or less, being same land which S. M. Fox and wife, with another tract of land, conveyed to S. & W. Burns, by deed dated Nov. 19, 1863, containing pine and other lumber. No. 4. Also, in said township bounded on the east by Blake & Co., south by Love and others, west by White, Blake & Co., and north by Barr, containing 111 acres, partly cleared and under fence; also containing lumber, late the real estate the said plaintiffs,

52 which said real estate remained in your hands unsold for want of buyers, so that you could not have the monies in the said writ mentioned at the day and place therein contained, to render to the said First National Bank of Clarion for its debt, int., costs, and charges aforesaid, as by the said writ we commanded you:

Therefore, we command you, H. H. Neely, sheriff, that the said real estate, with the appurtenances, so by you seized and taken in execution, you expose to sale, and that you have that money before our judges, at Clarion, at our county court of common pleas, there to be held for the county of Clarion aforesaid, the first Monday in May next, to render to the said First National Bank for its debt, int., cost, and charges aforesaid, and have you then and there this writ.

Witness the Honorable James Campbell, president of our said court, at Clarion, the 5th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Attest: C. REICHART, *Pro.*

53 STATE OF PENNSYLVANIA,
County of Clarion, ss:

I, C. Reichart, prothonotary of the court of common pleas for the county of Clarion, in said State, do hereby certify that the foregoing pages contain a true copy and a correct transcript of the record and proceedings in the said cause, so full and entire as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarion, this 24th day of May, A. D. 1869.

[SEAL.] C. REICHART, *Pro.*

54 Among the records and proceedings in the court of common pleas of Jefferson County, in No. 185, May term, 1867, it is thus contained:

Docket entry.

THE FIRST NATIONAL BANK OF CLARION
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } 185.

Cost in Clarion County $4 25
Ent. Wilson, p. c. 1 65

Exemplification from the records of Clarion County court of common pleas.

Debt $10,300.00. Int. fr. 10th July, 1867.

48 May term, 1869.

Wilson.	FIRST NATIONAL BANK OF CLARION vs. WILLIAM BURNS, SURVIVING partner of the late firm of S. & W. Burns } 5. E. D., No. 38. Dec. t'r., 1868. May 1, 1869. After due and public notice, property cried and sold for $280. So ans. SH'FF NEELY.	Vend. exp's, 5 April, 1869. Debt..... $10, 000 00 Att'y's com..... 300 00 Pro. Richart..... 1 50 Att'ys tax & ent. 4 25 Sh'ff Neely..... 1 25 Sat..... 20	Received, May 1. 1869, of defendant, two hundred and thirty-eight dollars eighty-five cents, being the amount bid by plaintiff, on the real estate sold on this writ, less forty-one dollars fifteen cents, costs, paid by plaintiff. THEO. S. WILSON. *For Plaintiff.* Received of H. H. Neely att'y tax & ent. T. S. WILSON. Received of Sh'ff Neely $1. 50. C. REICHART.

49 CLARION COUNTY, *ss:*

[SEAL.] Commonwealth of Pennsylvania to the sheriff of the county of Clarion, greeting:

Whereas by our writ of fieri facias, bearing test the 2nd day of December, in the year of our Lord one thousand eight hundred and , we command you, that of the goods and chattles, lands and tenements of William Burns, surviving partner of the late firm of S. & W. Burns, in your baliwick, you should cause to be levied and made, as well the sum of ten thousand three hundred dollars, lawful money of Pennsylvania, which The First National Bank of Clarion, lately, before the judges of the court of common-pleas for the county aforesaid, by the judgment of the same court recovered against him of debt, as also six dollars and ten cents for its costs, whereof the aforesaid W'm Burns, late partner, is convict, &c., and that you should have these monies before the judges of the same court, at Clarion, at the court there to be held for the county of Clarion aforesaid, the first Monday in December next, to render to the said First National Bank of Clarion for
50 its debt, int., and costs recovered, as aforesaid, at which day, before our judges at Clarion, you returned; that, by virtue of said writ to you directed, you had seized and taken in execution: No. 1. All the right, title, and claim of W'm Burns, surviving partner of the late firm of S. & W. Burns, a tract or piece of land situated in Mill Creek Township, Clarion County, beginning at a post corner of Jesse Teat's land; thence, by lands of S. & W. Burns, north 175 perches, to a post; thence, by land sold J. & J. Slater and H. Sagst, east 240 perches, to a post; thence, by land of H. Beer and S. & W. Burns, south 145 perches, to a post; thence, by land of W'm H. Grady and lands of Jesse Teats, west 240 perches, to the place of beginning, containing 262 acres, more or less, being same land sold by S. M. Fox to S. & W. Burns, by deed dated Dec. 8, 1864, containing pine and other lumber. No. 2. Also, a tract or piece of land situated in Mill Creek Township aforesaid, beginning at a post; thence, by land of S. & W. Burns, north 175 perches, to a post; thence, by land sold J. & J. Slater, west 105½ perches, to a post; thence, by other land now or late of S. M. Fox, south
175 perches, to a post corner of land sold Jesse Teats; thence, by
51 same, east 105½ perches, to the place of beginning, containing 111 $\frac{3}{10}$ acres, more or less, being same land conveyed with another tract by S. M. Fox to S. & W. Burns, by deed dated Nov. 19, 1863, said

tract having pine lumber, &c. No. 3. Also, a tract or piece of land situated in said township, beginning at a post, corner of land of W'm H. Grady; thence, by other land sold S. & W. Burns, north 115 $\frac{8}{10}$ perches, to a post; thence, by land sold H. Beer, east 108 $\frac{1}{10}$ perches, to a post; thence, by other land of S. M. Fox, south 115 $\frac{8}{10}$ perches, to a post; thence, by same, and land sold H. B. McCanna, west 108 $\frac{1}{10}$ perches, to the place of beginning, containing 78 acres and $\frac{2}{10}$ perches, more or less, being same land which S. M. Fox and wife, with another tract of land, conveyed to S. & W. Burns, by deed dated Nov. 19, 1863, containing pine and other lumber. No. 4. Also, in said township bounded on the east by Blake & Co., south by Love and others, west by White, Blake & Co., and north by Barr, containing 111 acres, partly cleared and under fence; also containing lumber, late the real estate the said plaintiffs,

52 which said real estate remained in your hands unsold for want of buyers, so that you could not have the monies in the said writ mentioned at the day and place therein contained, to render to the said First National Bank of Clarion for its debt, int., costs, and charges aforesaid, as by the said writ we commanded you:

Therefore, we command you, H. H. Neely, sheriff, that the said real estate, with the appurtenances, so by you seized and taken in execution, you expose to sale, and that you have that money before our judges, at Clarion, at our county court of common pleas, there to be held for the county of Clarion aforesaid, the first Monday in May next, to render to the said First National Bank for its debt, int., cost, and charges aforesaid, and have you then and there this writ.

Witness the Honorable James Campbell, president of our said court, at Clarion, the 5th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Attest: C. REICHART, *Pro.*

53 STATE OF PENNSYLVANIA,
County of Clarion, ss:

I, C. Reichart, prothonotary of the court of common pleas for the county of Clarion, in said State, do hereby certify that the foregoing pages contain a true copy and a correct transcript of the record and proceedings in the said cause, so full and entire as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarion, this 24th day of May, A. D. 1869.

[SEAL.] C. REICHART, *Pro.*

54 Among the records and proceedings in the court of common pleas of Jefferson County, in No. 185, May term, 1867, it is thus contained:

Docket entry.

THE FIRST NATIONAL BANK OF CLARION
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } 185.

Cost in Clarion County $4 25
Ent. Wilson, p. c. 1 65

Exemplification from the records of Clarion County court of common pleas.

Debt $10,300.00. Int. fr. 10th July, 1867.

July 17th, 1867, D. S. B. on single bill, dated July 9, 1867, calling for the payment of ten thousand three hundred dollars, one day after date, with power of attorney to confess judgment for above sum, waiving inquisition, exemption and stay of execution, with attorney's commission of three per cent., in all the sum of $10,300.00.

Entered in Jefferson County, July 18th, 1867.

I. M. STECK, *Pro.*

Fi. fa. to No. 71, Sept. tr., 1867.

55 *Judgment-docket entry.*

Burns William. 1st National Bank of Clarion. No. 185. May tr., 1867. Ent. 18 July, 1867. Debt, $10,300.00; Int. fr. 10th July, 1867. Costs 5 90.

Among the records and proceedings of the court of common pleas of Clarion County, at No. 132 of Sept. term, A. D. 1867, it is thus contained, to wit:

September term, 1867.

Wilson.

THE FIRST NATIONAL BANK OF CLARION
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. and W. Burns. } 132.

Debt, $10,000.00; att'y's commission, $300.00; int. from 10th July, 1867. Defendant, by his attorney, Theo. S. Wilson, by warrant duly constituted, appears and confesses judgment against him, and in favor of the said plaintiff, for the sum of ten thousand three hundred dollars, with costs of suit, with interest from July 10, 1867, release of errors
56 and waiving inquisition and condemnation of real estate, also waiving stay of execution, and all laws now in force, or hereafter to be passed, exempting any property from levy and sale, under legal process.

Entered July 18th, 1867.

Attest:

C. REICHART, *Pro.*

Defendants.	P'g.	Plaintiffs.	Date of entry.	Number & term.	Amount.
W'm Burns, surviving partner of the late firm of S. & W. Burns.	67	The First National Bank of Clarion.	18 July, 1867...	No. 132. Sept. term, 1867 Int. fr. 10th July, 1867. Costs.....	$10,300 00 4 2

57 *Copy of narr and confession.*

In the court of common pleas of Clarion County.

THE FIRST NATIONAL BANK OF CLARION
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } No. 132. Sept. term, 1867.

CLARION COUNTY, *ss:*

The First National Bank of Clarion comes into court, by Theo. S. Wilson, attorney, and complains of W. Burns, on the ninth day of July,

in the year of our Lord one thousand eight hundred and sixty-seven, at the county aforesaid, by a certain writing obligatory by the said W. Burns, surviving partner of the late firm of S. & W. Burns, signed, and sealed, and stamped, and to the court now shown, did acknowledge himself to be held and firmly bound unto the said First National Bank of Clarion, in the sum of ten thousand dollars, payable one day after date thereof, without defalcation, value received, with interest from date; and further did empower any attorney of any court of record within the United States or elsewhere, to appear for him and confess judg-
58 ment against him as of any term, for above sum, with costs of suit, and three per cent. attorney's commission, and release of all errors, waiving inquisition, and agreeing to the condemnation of any property that may be levied upon by any execution which may issue forthwith on failure to comply with the conditions thereof; also waiving the benefit of the exemption laws or any act of assembly relative to executions now in force or hereafter to be passed.

THEO. S. WILSON,
Att'y for Pl'ff.

JULY 18, 1867.

CLARION COUNTY, *ss:*

By virtue of which power of attorney authorizing me thereto, I, Theo. S. Wilson, do appear for the said W. Burns, surviving partner of the late firm of S. & W. Burns, and confess a judgment against him and in favor of the said plaintiff, for the sum of ten thousand dollars, with the sum of three hundred dollars, attorney's commission; in all, the sum of ten thousand three hundred dollars, with costs of suit, with interest from July 10, 1867, release of errors, and waiving inquisition and condemnation of real estate; also waiving stay of execution, and all
59 laws now in force or hereafter to be passed, exempting any property from levy and sale under legal process.

THEO. S. WILSON,
Att'y for Defendant.

JULY 18, 1867.

(Endorsement:) No. 132, September term, 1867. The First National Bank of Clarion vs. W'm Burns, surviving partner of the late firm of S. & W. Burns. Narr and confession of judgment. D. S. B., $10,300.00. Int. from July 10, 1867. Filed July 18th, 1867. Theo. S. Wilson.

STATE OF PENNSYLVANIA,
County of Clarion, ss:

COURT OF COMMON PLEAS SEAL OF CLARION CO., PA.

I, C. Reichart, prothonotary of the court of common pleas for the county of Clarion, in said State, do hereby certify that the above and foregoing pages contain a true copy and correct transcript of the record and proceedings in the said cause, so full and entire as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and seal of the said court, at Clarion, this 18th day of July, A. D. 1867.

C. REICHART, *Pro.*

[5c. U. S. rev. stamp.]

60 In the court of common pleas of Jefferson County.

THE FIRST NATIONAL BANK OF CLARION
vs.
W. BURNS, SURVIVING PARTNER OF THE LATE firm of S. & W. Burns. } No. . September term, 1867.

Issue writ of fieri facias on the above judgment, returnable to next term.

THEO. S. WILSON,
Att'y for Pl'ff.

To JOHN M. STECK, Esq.,
Prothonotary.

JULY 19, 1867.

Execution-docket.

1st NATIONAL BANK OF CLARION *vs.* W'M BURNS, SURVIVING PARTNER OF the late firm of S. and W. Burns. } 71.	Fi. fa. in debt:		
C. D., No. 185. May t'r, 1867.	Debt	10,300 00	July 22nd, 1867. Levied on personal property, as per schedule attached to writ.
Issued 20th July, 1867.	Int. fr. 10th July, 1867.		
Vend. ex. to 4. Dec. t'r., '67.	Costs in Clarion Co...	4 25	
	Ent'y	1 65	
	S. W. E.....	25	
	This W	60	Property not sold for want of time.
	Sh'ff' C	145 80	

61 JEFFERSON COUNTY, *ss*:

{ COURT OF COM. PLEAS. SEAL OF JEFFERSON COUNTY. } The Commonwealth of Pennsylvania to the sheriff of said county, greeting:

We command you that, of the goods and chattels, lands and tenements, of William Burns, surviving partner of the late firm of S. and W. Burns, late of the county of Jefferson, in your bailiwick, you cause to be made the sum of $10,300.00, lawful money of Pennsylvania, which 1st National Bank of Clarion, lately before the judges of the court of common pleas of said county by the judgment of the said court recovered against him, as $590, like lawful money which the said pl'ff were adjudged as their debt and costs and damages, whereof the said debt is convict as appears of records; and have you those monies before our judges at Brookville, at our county court of common pleas, there to be held for the County of Jefferson, on the second Monday of September next, to render to the said plaintiffs for their debt & costs and damages aforesaid; and have you then and there this writ.

62 Witness the Honorable James Campbell, president of our said court, at Brookville, the 20th day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

J. M. STECK,
Prothonotary.

[Fieri facias. J. P. George, pr.]

JULY 22nd, 1867.

By virtue of the within writ, I have levied on all the defendant's right, title, interest, and claim of, in, and to five hundred thousand feet of white-pine boards, more or less, now lying at what is called the Laurel City mill, and three hundred thousand feet of white-pine boards more or

less, now lying at what is called Crystal City; also three hundred thousand, more or less, at Sandy Rock mills, and one hundred thousand feet, more or less, at the old McGaffic mills, making in all 1,200,000 feet, more or less.

July 25th. Also a lot of dry goods, groceries, clothing, glass, nails, iron, queen's-ware, leather, all of the variety of goods comprising a general assortment.

63 UNITED STATES OF AMERICA,
Western District of Penn'a, ss:

The President of the United States to the First National Bank of Clarion, and the sheriff of Jefferson County, and his servants and deputies, and each of them, greeting:

Whereas the petition of William Burns, filed on the 31st day of July, 1867, having been read and considered, and it appearing to the court that the said William Burns has filed in this court a petition for adjudication in bankruptcy of the firm of S. & W. Burns, a firm doing business in the county of Jefferson, in the above district, that a writ of execution against the property of said firm, at the suit of the First National Bank of Clarion, is now in the hand of the sheriff of the said county of Jefferson, and if a sale of said property is permitted, upon and by virtue of said writ, a large amount of property will be sacrificed, and the purpose and provisions of the act of Congress, approved March 21st, 1867,
64 entitled "An act to establish a uniform system of bankruptcy throughout the United States" will be defeated; and whereas it was ordered and decreed by the said court that a writ in the nature of a writ of injunction be issued by the clerk of this court, under the seal thereof, directed to the First National Bank of Clarion, and the sheriff of Jefferson county, and his deputies, and servants, commanding them, and each of them, to desist from the prosecution of the said writ of execution by offering the property of the said firm of S. & W. Burns, or any member thereof, for sale, upon said writ; and that the said sheriff shall, upon the due appointment of an assignee in bankruptcy, under the petition of the said W'm Burns, turn over and deliver the said property, levied upon by virtue of said writ of execution in favor of the 1st National Bank of Clarion, unto such assignee: Now, therefore, in consideration of the premises, you, the said First National Bank of Clarion, the said sheriff of Jefferson County, your servants and deputies, and all persons acting by and under your authority, each and every one of you, are hereby strictly commanded and enjoined, under the penalty which the court may see proper to inflict,
65 that you and each of you do absolutely desist and abstain from the prosecution of the said writ of execution, by offering the property of the said S. & W. Burns, or any member thereof, for sale upon said writ, and that you, the said sheriff, shall, upon the due appointment of any assignee in bankruptcy, under the petition of the said W'm Burns, turn over and deliver the said property levied upon by virtue of said writ of execution in favor of the First National Bank of Clarion to such assignee.

Witness the Honorable Wilson McCandless, judge of said court, at Pittsburgh, this 31st day of July, A. D. 1867.

[SEAL.] S. C. McCANDLESS,
Clerk of Dist. C't W. D. Pa.

(Copy.)

66 In the court of common pleas of Jefferson County, nee fa. fa. to Sept. term, 1867.

THE FIRST NATIONAL BANK OF CLARION
vs.
W'M BURNS, SURVIVING PARTNER OF THE late firm of S. & W. Burns.

Issue venditioni exponas, returnable to next term. Debt, $10,300.00; Int. from July, 1867. Cost.

Yours, &c.,

THEO. S. WILSON,
For Pl'ff.

To J. M. STECK, Esq., *Prothonotary.*

SEPTEMBER 9, 1867.

JEFFERSON COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of said county, greeting:

Whereas, by our certain writ of fieri facias, bearing test the 2nd day of May, in the year of our Lord one thousand eight hundred and sixty-seven, we commanded you that, of the goods and chattels, lands
67 and tenements, of W'm Burns, surviving partner of the late firm of S. & W. Burns, in your bailiwick, you should cause to be levied and made the sum of $10,300.00, lawful money of Pennsylvania, which 1st National Bank of Clarion, lately before the judges of the court of common pleas for the county aforesaid, by the judgment of the same court, recovered against him, as $585 like money, which, to the said pl'ff, in our said court, were adjudged for his debt, costs, and damages, whereof the said debt is convict, &c., and that you should have those monies before our judges of the same court, at Brookville, you returned that, by virtue of the said writ to you directed, you had seized and taken in execution all def't's right, title, int., & claim, of, in, and to five hundred thousand feet of white-pine boards, more or less, now lying at what is called the Laural City mill; and three hundred thousand feet of white-pine boards, more or less, now lying at what is called Crystal City; also three hundred thousand, more or less, at Sandy Rock mills, and one hundred thousand feet, more or less, at the old McGaffic mills, making in all, 1,200,000 feet, more or less.

68 July 25, also, a lot of dry goods, groceries, clothing, glassware, iron, queen's-ware, leather, all of the variety of goods comprising a general assortment, late the estate of W'm Burns, with the appurtances, which said property remained in your hands, unsold, for want of buyers, so that you could not have the mon'ies in the said writ mentioned, at the day and place therein contained, to render to the said pl'ff's, for their costs and charges, as by the said writ you were commanded.

And that the residue of the execution of the said writ appeared in a certain schedule thereto annexed, by which schedule or inquisition it appears that the rents, issues, and profits of the premises are not of a clear yearly value, beyond all reprises, sufficient within the space of seven years to satisfy the debt and damages in the said writ mentioned. Therefore we command you that the said property, with the appurtenances, so by you seized and taken in execution, you expose to sale, and that you have that money before our judges, at Brookville, at

our county court of common pleas, there to be held for the county
69 of Jefferson, the 2nd Monday in December next, to render to the said plaintiff, for their debt, and costs, and charges aforesaid; and have you then and there this writ.

Witness the Hon. James Campbell, president of the said court at Brookville, the 9th day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

J. M. STECK,
Prothonotary.

Execution docket.

1st National Bank of Clarion *vs.* W. Burns, surviving partner of the late firm of S. & W. Burns. 4.	Vend. ex.	Money made ten thousand three hundred & fifty-nine 56-100 dollars, $10,359.56, per schedule attached.
	Debt..... 10,300 00	
	Int. fr. 10 July, 1867.	
	Costs in C. C 4 25	
E. D. 71. Sept. tr., 1867.	Ent'y..... 1 65	
	Pro's 60	
Paid 9 Sept., 1867.	Sh'ff C..... 145 80	Penalty am't.... $5,511 04
	This W 90	Store
	S. W. E..... 25	Boards " 4,848 52
	Sh'ff. C 850 61	$10,359 56

Received of Sheriff C. nine thousand three hundred fifty-nine $\frac{79}{100}$ dollars on this case.

THEO. S. WILSON, *for Pl'ff.*

SEPT. 14TH, 1868.

70 In the common pleas of Jefferson County.

1st National Bank of Clarion *vs.* W'm Burns, surviving partner of the late firm of S. & W. Burns. } Fi. fa. No. 71. September term, 1867.

Sheriff's bill of costs in above case.

Mil'age services, making levy and invoices	76 50
Adjournments	30 00
Advertising four lots of boards	15 00
Percentage on costs & advertising goods.....	24 30
	$145 80

In the common pleas of Jefferson County.

1st National Bank of Clarion *vs.* W'm Burns, surviving partner of the late firm of S. & W. Burns. } Vend. ex. No. 4. December term, 1867.

Sheriff's bill of costs on above vend. ex.

Advertising & mil'age.....	$22 50
Cryer's fee & services selling boards.....	25 00
Percentage on debt	75 00
Cryer's fees for selling goods.....	84 00

	Estimating and delivering boards		40 00	
71	Sheriff's services for selling goods		$100 00	
	T. P. McCrea, services at store, S.....	186 00		
	B... ..	123 00		
			409 00	
	Percentage on costs.....		13 11	
				768 61
	Services rendered by E. H. Clark		32 00	
	" " " M. M. Meredith.....		26 00	
	" " " Al. Henderson.....		24 00	
				82 00
				$996 41

M. CARRIER, *Sh'ff.*

List of merchandize sold as the property of S. & W. Burns, Corsica, Oct. 22, 23, 24, 25, and 26th, 1867.

3 chinas, one lot of washboards, 4 churns, 1 lot oil-cloth, 6 hoes, 10 rakes, 6 manure-forks, 14 handles scythe-snath scales, 1 scoop-sho vel, 1 shovel, 6 forks, 1 broom, 12 split brooms, 25 axe-handles, 2 rakes, 30 lb. madder, 5 coal-buckets, 75⅌ pig-lead, 2 anvils, 1 vice, 13 cultivator-points, 150 burs, 115⅌ do., 352 bacon, 14 kegs white-lead, 6 half-bushels, 2 peck-measures, 2 coal-buckets, 25⅌ paint, 35 cut-&-dry, 12 copperas, 2 kegs lard, 1 shovel-plow, lot saw, 60 lot cast burs, 2 cross-cut saws, 5 mill-saws, 400⅌ cable-chain, 50⅌ do., small, 2 bbl. salt, 1 lot buggy-axles, 4 wagon-boxes, 6 chains, 75⅌ whiting, 5 72 chains, doz. flasks, 1 lot lamp-chimneys, 20 b'x' glass, 3 brass kettles, 1 box clothes-pins, 1 lot furs, 1 whetstone, 1 pump, 1 bbl. mackerel, 12 satchels, 1 piece oil-cloth, 1 lot shoes, 1 box wall-paper, 1 can castor-oil, 1 lot scythes, 9 corn-scythes, 6 grass do., 1 keg rock-powder, 2 joint' stove-pipe, 1 keg powder, 3 bolts paper, 1 drawing-knife, 1 looking-glass 9 slates, 16 curry-combs, 1 bowl, 8 can', 2 cow-bells, 1 box sundries, 4 box' logwood, 5 brushes, 3 coal-chisels, 1 lot zinc, 2 castile-soap, 1 doz. sacks, 1 lot do., 6 coffee-mills, 3 reeds, 8 door-locks, 2 dry butts, 3 carriage-bolts, 6 augers, 1 box cream-tartar, 1 ext. coffee, 1 chalk, 1 lot gimlets, 6 augers, 1 broad-axe, 9 D. B. axes, 12 do. D. B., 6 broad-axes, 1 box Rio coffee, 36⅌ shoe-nails, 100⅌ horse-shoes, 75⅌ nails, 600⅌ nails, 1 lot bags, 3 pairs springs, 1 keg chalk, 1 bed-cord, 1 tub & bed-cord, 1 lot cable, 1 bbl. vinegar, nails mixed, lot, 1 lot hinges, 2 counter-scales, 1 lot screws, 1 shoemaker's wax, 1 apple-pairer, 1 lot iron, 1 lot steel, 1 lot iron, 14 overcoats, 12 pants, 3 pants & vests, 29 coats, 2 overcoats & vests, 12 coats, 1 coat & leg, 4 do., 4 leggings, 3 pants & vests, 8 coats, 30 coats, 16 vests, 15 coats, 17 pants, 12 vests, 1 pant, 6 coats, 1 pants, 24 boots, 3 boots, 13 shoes, 30 p'rs, 20 p'rs shoes, 3 p'r boots, 1 churn, 5 boots, 40 shoes, 22 boots, 9 boots, 1 case do., 2 p'r' shoes, 27 cases boots, 43 shoes, 2 satchels, 6 shovels, 7 p'r 73 shoes, 7 spades, 1 shovel, 20 hoes, 1 rake, 5 trunks, 5 umbrellas, 8 shovels, 3 fenders, 10 doz. brooms, 30 slates, 8 mops-handles, 6 manure-forks, 9 bench-screws, 2 shove's, 2 snath', 6 straw-hats, 1 doz. chip, 18 hats, 1 doz. do., 45 doz. hats, 23 linen coats, 38 linen pants, 17 coats, 18 pants, 12 boy pants, 6 fine cass., 2 pants, 27 vests, (cass.,) 64 doz. hats, 36 y'ds delaine, 31, 35, 91, 22, 56, 20, 25, 22, 14, 25, 15, 25, 19, 25, 37, 21, 35, 40, 36, 54, 10, 12 y'ds delaine, 53, 24, 17, gingham, 46 cambric, 41 linen, 19 do., 30 y'ds linen, 49 gingham, 34, 35 coat &

pants, 7 pr's buckskin-gloves, 2 p'rs do., 44 p'rs mitts, 6 merino, 15 half-hose, 12 gloves, 30 p'rs white gloves, 6, 5, 7, 7, 11, 19, 34, silk gloves, 2 hats, 10 p'r gloves, 23 kid, 1 doz. cord, 5 p. chenelle, 1 box braid, 3 lots lace, 1 box button', 1 lot trimming, box buttons, box collars, ½ doz. portemonies, 2½ doz. rose envelopes, braids, ribbons, 2 collars, 2 thimbles, buttons, watch-guard, 4 cord-tassels, box rings, 2 cuffs, 6 spools, 12 pomade, 66 baskets, 20 linen coats, 26 pea-jackets, 17 shirts, 5 p'r pants, 4 shirts, drawers, &c., 88 shakers, 2 p'r pants, netts, coats, vest and pants, box dress butt ns, 4 doz. balls, hat-bands, 1 p'r braces, 10 halter-chains, 10 p'rs butt-chains, 3 scythes, 12
74 p'rs breast-chains, 6 coat-hooks, 16 whip-lashes, 1 doz. whips, 8 wagon-whips, lot whip', &c., 3 shovels, 3 pokers, 1 shovel, slaw-knife, 6 mattocks, 2 lots tongs, screw-sett, 3 p'rs tongs, 3 drills, 3 p'rs steelyards, 4 squares, 2 picks, 3 malletts, 6 tongs, 6 picks, 8 p'r hammers, 2 sledges, 7 p'r haimes, 2 cultivator-teeth & mallet, 3 bush-scythes, 3 hay-knives, 4 straw-knives, 7 coffee-mills, 4 sausage-cutters, 12 sad-irons, 29 slates, 21 wrenches, lot strap-hinges, 3 carriage-rings, 6 auger-handles, 7½ doz. knives & forks, 15 butcher-knives, carving-knife & fork, coffin trimmings, harness trimmings, 14 p'rs shears, 8 bridle bitts, 13 shoe knives, dox. table-spoons, 47 spoons, 1 coffee-mill, 14 knives & forks, 5 board-lines, 2 wrench', 1 lot sand-paper, lot chalk-line, 2 boxes spectacle-cases, lot whiffle-trees, irons, 4½ doz. table-spoons, 2 doz. tea-spoons, 10 door-locks, 9 pr's snuffers, 8 bridle-bitts, lot razor-strops, p'r tongs, 6 jackets, 145 p'r hose, 12 pr's gloves, lot hose, (assorted,) 57 hoods, small sack, 11 scarfs, 11 hoods, 8 breakfast-shawls, 5 cloak-shawls, 11 nubias, 2 scarfs, 131¾ yards water-proof cloth, 102½ y'ds cotton jeans, 34½ y'ds cassinette, 4 y'ds tweed, 43½ y'ds broadcloth, 85½ y'ds cassinette, 14 y'ds delaine, 24 y'ds Italian cloth, 263½ y'ds
75 delaine, 59¾ y'ds figured Persian cloth, 110¼ y'ds lawn, lot cambric, 30 shawls, 21 bales shirts, 11 hoop-skirts, 4½ y'ds gingham, 12¼ y'ds Italian cloth, 36 y'ds delaine, 53½ y'ds canton-flannel, 42 y'ds all-wool delaine, 25 y'ds delaine, 88 y'ds cambric, 139½ y'ds chambray gingham, 8 comforts, 2 pieces berege, 4 doz. collars, 6 shawls, 1 lace-shawl, 7½ doz. collars, 7 pieces lace, 2 pieces bobinette, lot lace, 6 stand-cases, 2 pieces ber'ge, 2 veils, 8 shawls, 19 balmorals, 14 capes, 51 yards print, 3 shawls, 92½ y'ds print, 26 tin-basins, sprinkler, 9 funnels 6½ doz. coffee-pots, 3 gallon-measures, 12 buckets & lids, 18 molasses-cans, 4 oil-cans, 6 sauce-pans, 19 pans, (assorted,) 6 candle-moulds, 4 measures, pie-pans, (30,) 6 scoops, 6 buckets & lids, 7 skimmer', 8 scoops, 69 tin-cups, 2 coffee-pots, 6 dipper', 5 buckets, 1 pan, 4 stew-pans, 4 buckets & lids, 3 skimmers, 1 oil-can, 2 wash-boards, 14 tea-caddies, 2 doz. painted tins, 3 do. do., 5 pans & candle-sticks, 2 buckets, 2 doz. fruit-cans, 5 do. do., 6 bowls, 1 scoop, 6 coats, 8,000 shingles, 4,000 do., 3 overcoats, 1 coat, 23 vests, 4 pants, 7 overalls, 32 pants, 7 vests, 1 pants, 4 overalls, 4 pants, 6 umbrellas, 7 coats, 5 umbrellas, 5 capes, 60 hats, 2 caps, 4 baskets, 1 neck-band, 2 doz. lasts, 6 boot-trees, 5 lasts, 1 lot comforts, 1 lott spool-cotton, 2 stew-
76 pans, 2 stew-pan', 11 tea-kettles, 9 iron pans, 2 lot' wrapping yarn, 4 sides upper leather, 1 knife, 3 jackets, 42 lbs. leather, 5 sides upper leather, 7 kip, 2 calf skins, 84 sole-leather, 7 monkey-wrenches, 4 cocks, 3 calking chisels, 13 saw-set, 1 box catches, 1 doz. framing chi els, 10 scratch-awls, 7 2-ft rules, 39 coat-hooks, 1 lot padlocks, 18 bits, doz. castors, 18 catches, 16 castors, 1 box pulleys, 10 bolts, 4 hash-knives, 1 box, 20 gouges, 23 catchers, 14 plane-bits, 1 box scissors, 1 snath, 15 chisels, box mahogany knobs, lot coffin-trimmings, lot tacks, coffin-trim mings, box window-fastenings, box buckles, 6 rulers, 2 box' coffin-trim

mings, box buckles, 10 corks, brace & bit, 2 box' buckles, box castors, 2 box' knobs, clocks, box chisels-handles, 3 box' carriage-bolts, 2 box' screws, box bolts, box gimlets. 3 box' carriage-bolts, 4 squares & bevel, 5 slicks, box handles, pair pincers, 10 screw-drivers, 6 spoke-shaves, 3 guages, lot bolts, 7 powder-flasks, thum'-latchets, 1 bitt, 10 snuffers, 2 lot' soaps, pipe, 6 box' flowers, 24 parcel' shoes, 7 slipper, 31 shoes,
1 flute, 15 hoop-skirts, 6 shoes, 2 doz. shears, 20 balls, lot awls, 6½
77 doz. hair-brushes, 39 staves, 11 lamp-cleaners, 6 currycombs, 10
scrub-brushes, 9 lamp-cleaners, 13 graters, 14 currycombs, cards, 1 lot shot, 1 lot navy tobacco, 1 lump lead, 66 yards carpet, 1 thermometer, 9 cast-screws, 3 bracelet, 21 bread-pans, 1 spirit-level, 18 pairs spectacles, 2 lots rings, 1 ass'd lot P. S. carpet, 1 thermometer, 1 lot rings, 1 lot ear-drops & breast-pin, 7 doz. knives, 94 knives, 4 crystals and 3 plumbs, 1,000 per. caps, 1,000 do. do., 1 lot screws, 57 spools, 53 pr. suspenders, 14 candle-sticks, 10 belts, 10 portmonies, 4 pocket-books, 15 y'ds bonnet-ribbon, 10 nett's, 1 lot false hair, 11 water-falls, 2 2 bolt' girthing, 6 mems., 1 doz. wire, 11 neck-ties, 5 fifes, 1 lot awls, 8 mems., 26 memorandums, 2 balls beeswax, 1 lot braid, 13 pocket-books, 1 box collars, 1 lot of guard-chains, 1 pencil, 1 lot breast-pins, 1 lot sundries, 1 lot marbles, 3 tea-bells, 2 albums, 1 lot lamp-wick, 1 do. tassels, 2 woolcords, 2 bbls. books, 3 doz. bells, 1 lot paint-brushes, 6 blank-books, 1 lot goods, 13 blank books, 3 ready-reckoners, 6 planes, 1 lot dry apples, 12 p'r hinges, 1 lot do., 15 butridges, 4 whitstones, 1 lot augers, 6 drawing
knives, 7 braces, lot drugs, 106 y'ds chambres, 1 trunk, 27 y'ds
78 plaid, 10 y'ds flannel, 2 lanterns, 60 y'ds delaine, 14 y'ds crash, 6 napkins, 91 y'ds prints, 4 coverlids, 35 y'ds sheeting, 20 y'ds crash, 20 y'ds cassimere, 40 y'ds check, 2 cases boys' boots, 3 p'r boots, 2 cases boots, 78 y'ds flannel, 1 umbrella, 1 basket, 40 y'ds ticking, 93 y'ds prints, 1 R bro. drills, 1 lot zephyr, 5 p'r hose, 415 y'ds prints, 87 y'ds do., 1 doz. socks, 66 p'r shoes, 1 safe, lot shoes, 42 p'rs boots, 7 p'rs shoes, 12 p'rs boots, 30 p'rs boots, 21 p'rs shoes, 1? clocks, 11 bowls, 15 looking-glasses, 4 p'rs clamps, 16 under-shirts, 2 looking-glasses, 7 shirts, 51 shirts, 31 p'r drawers, 9 hoop-skirts, 12 shirts, 6 pr. overalls, 2 comforts, 5 doz. socks, 4 doz. socks, 2 blankets, 11 p'rs socks, 26 y'ds drills, 6 p'r socks, 12 pair mitts,

50	y'ds flannels,	50	y'ds drills,	83	y'ds cott.,	34	"	sheeting,
9	" ticks,	16	" sheeting,	26	" drills,	28	"	doe-skin,
22	" gingham,	49	" linen,	30	" muslin,	46	"	denims,
48	" bagging,	82½	" check,	66	" check,	32	"	denims,
12	" drills,	30	" cass.,	34	" jeans,	36	"	drills,
7	" cass.,	39½	" cass.,	33½	" jean,	9½	"	cass.,
33½	" jean,	4¼	" flannel,	25½	" cass.,	3⅝	"	cass.,
2	" satinette,	9	" cass.,	21½	" flannel,	15	"	"

24 y'ds flannel, 30⅛ y'ds flannel, 12 shirts, 18 " tweed,
79 3 p'rs pants, 33 y'ds tweed, 23 y'ds tweed, 4 p'rs pants, 51 y'ds ticks, 3 yards selicia, 2 p'rs pants, 31 y'ds gingham, 33 y'ds prints, 2 vests, 10 y'ds tab. velvet, 5½ y'ds cambric, 12 bolts window-blinds, 28 y'ds tabling, 42 y'ds prints, 18 comforts, lot paper collars, lot cot. bats, 140 y'ds carpet, 86 plates, 4 doz. bowls, 2 w. bowls, lot tumblers, 32 glass-dishes, 13 salts, 4 w. bowls, &c., 15 chambers, 2 terreens, 23 pitchers, ½ doz. lamps, 8 oilers, 6 m. pitchers, 1 lantern, 9 pepper-boxes, 24 lamps, 2 lots candle-stick, 46 doz. cups and saucers, 4 soap-strainers, 11 bowls, 45 plates, 16 bowls, 418 plates, 14 bowls, 37 bowls, 1 castor, 32 dishes, 4 sugar-bowls, 9 pitchers, 5 plates, 3 buck-saws, 3 tea-pots, 16 creams, 4 tea-pots, 2 sugars, 20 band-boxes, 3 pitchers, 1 spirit-level, 1 lot teas, 2 tumblers, lot bowls, lot cups & saucers, (queen,) 1 glass, 2 waiters, 2 pitch-

ers, 30 dishes, lot tea-pots, bowls, &c., lot pitcher', lot wood bowls, lot waiters, lot carpet-yarn, lot hardware, lot auger-handles, 2 glasses, lot tar, &c., 8 seives, lot sundries, 6 scythes snath', 2 kegs nails, 30 dr. tob., 7 doz. brooms, lot hats, 19 lanterns, lot rakes, basket, lot wall-paper, 69 lbs. log-chain, 119 gals. stone-ware, 1 box chimneys, lot sickles,
80 1 lot rosin, lot glass, 1 keg sundries, lot wool, 7 doz. waddings, lot stove-pipe, lot cables, lot rags, 22 bbls. salt, 170 lb iron, lot hammers, 1 b. shoes, 1 doz. brooms, lot books, 2 powder-cans, lot shoes, lot fans, lot cards, 2 doz. currycombs, lot wicking, lot suspender', lot buck-gloves, lot envelopes, lot combs & gloves, lot millinery, lot socks, lot furs, &c., lot hose, lot shoes, (gum,) 2 p'rs boots, 265 p'rs shoes, 3 demi-johns, 21 corsets, lot hose, 4 shawls, 4 comforts, 7 nubias, 4 hoods, 7 scarfs, lot combs, 12 belt-buckles, lot suspenders, lot pen-holders, lot gloves, box hose, lot stuff, lot snuff-boxes, lot comforts, lot brushes, 1 lot stuff, lot pocket-books, lot combs, lot pocket , lot stuff, lot pocket-books, lot gloves, lot stuff, lot caps, 5 hoods, 5 pair drawers, 2 p'r drawers, lot collars, lot gloves, lot buttons, 32 y'ds prints, lot lamp-wicks, desk & chairs, &c., office furniture, 3 stoves, lot goods, 1 chandelier, 11 rakes, 1 keg white lead, amounting, in all, to $5,511.04.

81	Amount rec'd and deposited by Theo. S. Wilson....		$2,906 32
	G. W. Arnold's bill.....		322 05
Sam'l. Wilson	do.	$520 12	
Do.	do. since added	31 13	
			551 25
Brookville bills			1,731 42
			5,511 04
Amount of boards.....			4,848 52
			$10,359 56

STATE OF PENN'A,
Jefferson County, ss:

[SEAL.] I, J. M. Steck, prothonotary in and for said county do hereby certify the foregoing to be a true and correct copy of the record and papers on file in this court in the case of the First National Bank of Clarion vs. W'm. Burns, surviving partner of S. & W. Burns, so full and entire as they remain of record. In testimony whereof I have hereunto signed my name and affixed my official seal at Brookville, this 21st day of May, A. D. 1869.

[SEAL.] J. M. STECK,
Proth'y.

[5 c. U. S. rev. stamp.]

82 The plaintiff's counsel propose to ask the witness, who has testified that he was the sheriff of Jefferson County who sold the store-goods and cut lumber of S. and W. Burns on a writ in his hands, the actual value of such goods and lumber, in his opinion.

Objected to because incompetent and the pl'ff not being promitted to go beyond the amount for which the property sold at sheriff sale.

Objection overruled and evidence admitted and bill of exceptions allowed at instance of deft's counsel.

W. McKENNAN, *Cir. J.*

83 The plaintiff proposes further to ask the foregoing witness, who has testified that he sold pieces of real estate belonging to S. and W. Burns on writs in his hands, what it brought at said sales, and whether, in his opinion, it brought all it was worth.

Objected to as incompetent—first, because the judg's and writs of fi. fa., as being the best evedence, should be produced; and, 2nd, because it is an offer to prove-value of property some six months after the note of 9th July was given.

Objected to by deft's counsel, and objection overruled and bill to deft's.

W'M McKENNAN, *Cir. J.*

84 Defendants propose to prove by the witness that requests and the necessity for requests on the part of lumbermen for timporary extensions from their creditors were frequent, by reason of difficulties in getting their timber, &c., to market, and that such action on part of lumbermen, did not excite or tend to excite any suspicion whatever of the previous solvency of the party in the lumber country.

Plaintiff's counsel object to the foregoing offer because irrelevant & incompetent.

Objected to by pl'ff's counsel; objection sustained and rejected. Bill of def't.

W'M McKENNAN, *Cir. J.*

85 Defendants offer to prove by the witness that the issuing of the execution and the entry of the judgment was a su'prise to and wholly unexpected by him, and that from the time he was first apprised of it he opposed the bank in both judgment and execution and endeavered to have the original judgment opened.

Pl't'ff's counsel object to the foregoing offer as irrelevant and incompitant.

The first part of the offer is rejected, but the deft's may show what the witness did in opposition to the enforcement of the judgment & execution. Bill to defendants.

W'M McKENNAN, *Cir. J.*

86 Defendants propose to prove by the witness that, upon the entry of confession of judgment by the Clarion Bank, in Jefferson Co., and issuing of execution, he, the witness, come down to Pittsburgh, consulted his Pittsburgh creditors, and notified them of the state of affairs; and that, at their instance, he went into voluntary bankruptcy, they and he believing that in some way or other, under the promissions of the bank'-law, then new to all, the execution and all proceedings thereon might be set aside; that it was a part of the agreement and understanding of the witness and the creditors that the proceedings in bankruptcy was, if they were successful in defeating the bank executions, to be then superseded by arrangement and withdrawn, and the witness to be allowed to resume possession of his mills, &c., and an extension given him, and to be accompanied by proof that from and after the issuing of the bank's execution the defendant, Burns, fought and opposed the same.

87 Plaintiff's counsel object to the foregoing offer because irrelevant and incompetent.

Objected to by pl'ff's counsel; objection sustained and evidence rejected. Bill to def'ts.

W'M McKENNAN,
Cir. J.

88 J. B. JONES, ASSIGNEE, &c., }
vs.
1ST NAT. BANK OF CLARION. }

Plaintiff's points.

1st. Insolvency, as used in the bankrupt-act, does not mean an absolute inability to pay one's debts at a future time, upon a settlement and winding-up of all a trader's concerns, but he may be said to be in insolvent circumstances when he is not in a condition to pay his debts in the ordinary course of business, as persons carrying on trade usually do.

3rd. That every one is presumed to intend that which is the necessary and unavoidable consequence of his acts, and, therefore, when William Burns signed and delivered to the defendant in this case, the judgment-note, dated July 9, 1867, payable one day after date, giveing to the defendant the right to enter the same of record and issue execution thereon without delay, for a debt which was not then
89 due, it affords the strongest grounds for the presumption that the debtor intended to give to his creditor a preference, and that the said creditor intended to obtain such preference, thereby enabling him to make his money on execution before any other creditor could interfere; and that in such case it is wholly immaterial whether the preference was voluntary on the part of the debtor or given at the urgent solicitation of the preferred creditor.

4th. That if the jury believe that, on the 6th day of July, 1867, William Burns was under protest and from any cause unable to pay his debts in the ordinary course of business as they matured, and in consequence called his Pittsburgh creditors together and notified them of his situation, informing them at the same time that he could not go on unless they would grant him an extension of one, two, and three years, which they agreed to do, provided the balance of his creditors
90 would come into the arrangement, cautioning him at the same time not to give any judgment to any of his creditors, especially to the First Nat. Bank of Clarion, and afterwards he went from Pittsburgh to Clarion, and informed Mr. Arnold, cashier of the said bank, what had taken place at the meeting of the creditors in Pittsburgh, and Arnold expressed a favorable opinion and thought the arrangement could be made, and promised to see the balance of the directors of the bank, and within two or three days afterwards took the solicitor of the bank and drove ten miles to Corsica, where William Burns lived, and asked for a judgment-note, as the bank was a corporation and some of its stockholders were a little uneasy about the claim, and the said William Burns informed the said Arnold that he had agreed at the creditors' meeting in Pittsburgh, not to give any judgment-notes, and that the said Arnold was informed by Burns that he had no money or cash; then that the said Arnold was furnished with such a state of facts or circumstances as should have put him or any prudent man upon
91 inquiry, and therefore was reasonable cause for him to believe that the said William Burns at the time was either insolvent or contemplated insolvency.

5th. That if the jury find the facts as stated in the last point, and that the said William Burns gave to the said bank his judgment-note, dated July 9, 1867, for a debt not then due, the jury may also find that the said bank had reasonable cause to believe the said Burns insolvent,

and that said judgment-note was given in fraud of the provisions of the bankrupt-act, and with a view to give the said bank a preference.

6th. That if the jury find that the quantity and value of the assets of the said Burns had not materially diminished from July 9th, when the judgment-note was given, till July 30th, when he filed his petition in bankruptcy, and September 9th, when he was adjudged a bankrupt on his own petition, they may find that he was insolvent on the said 9th day of July.

92 7th. That if the jury find the facts substantially as stated in the last three points, it was an act of bankruptcy on the part of William Burns to give to the bank the note, with warrant of attorney to confess judgment; and the jury may find, from all the facts as stated in the foregoing points, that the said bank had reasonable cause to believe that the said Burns was insolvent, and, therefore, the plaintiff is entitled to recover in this action.

8th. That the measure of damages is the value of the property seized and sold by virtue of the executions issued on the judgment, confessed on said judgment-note, in the counties of Clarion or Jefferson.

9th. That a creditor who obtains from his debtor an unlawful preference, whether by one or other of the means ordinarily used, contrary to the provisions of the sections 35 and 39 of the bankrupt act; whether the debtor——

Withdrawn.

93 JONES, ASSIGNEE OF BURNS, *vs.* 1ST NAT. BANK OF CLARION.

Defendant's points.

1st. In this case pl'ff must recover (if at all) under the provisions of the 35th or 39 section of the bankrupt act. As the bankrupts, whose assignee sues in this case, to wit, S. & W. Burns, were not so adjudicated in an adverse proceeding in bankruptcy, prosecuted by their petitioning creditors, but went into bankruptcy voluntarily, the 39th section does not apply to this case; and, as the 35th section does not specify among the acts it exhibits, as does the 39th section, "the giving any warrant to confess judgment, no recovery can be had under that section, and the verdict of the jury must be for the defendant.

2nd. That, while under the bankrupt act, this court has the right (and by virtue of its process & orders reaching the parties themselves when they reside within the jurisdiction of the court, or their
94 agents and attorneys when the parties lives out of the jurisdiction) to restrain the further action of parties litigant in cases arrising under and referred to by the act from further proceedings in said cases during the pendency of the same, and while they are yet undetermined in the State courts, that is to say, while the said cases are yet without judgment, execution sale of defendant's property and distribution of proceeds; and, while the court has the right and power to restrain proceedings on unfair securities, when given in fraud of the bankrupt act, whether of record or not of record, yet the court has not the right or power to, and will not take jurisdiction in a suit of this kind when the judgment of a State court has been perfected by levy or sale, and distrobution of proceeds of sale of a defendant among the lien creditors of a defendant entitled by virtue of their liens under State laws to receive distribution.

3rd. The jury must be satisfied from the evidence in the case before they can find a verdict for the plaintiff in this suit.

95 1st. That, on the 9th of July, 1867, the firm of S. and W. Burns were insolvent in point of fact.

2nd. That the note of July 9, 1867, was given by Burns, and received by the bank, with intent, respectively, to give and receive a preference, and which, under the rule of law that every one is presumed to intend what is the natural and unavoidable consequence *as* of his acts, a prima-facie presumption of intent to give and receive a preference in this case may be presumed, as to Burns and the bank, that presumption is but prima-facie, and may be overcome and rebutted by the declaration of the parties, the testimony in the case showing the circumstances under which the alleged preference was given, and also by the acts and conduct of the parties to the alleged preference before and at and immediately after the giving of the note, and at and after the entry of judgment thereon & the issuing of executions.

3rd. That, when the 9th July, 1867, note was given, the bank, through its officers, had reasonable cause to believe that S. & W. Burns

96 w*as* insolvent, or acting in contemplation of insolvency.

4th. That, bearing upon the question of intent to give or receive a preference and upon the question of whether the defendant had in this case reasonable cause to believe S. & W. Burns insolvent, or acting in contemplation of insolvency, the jury will take into consideration the peculiarities of the residences of the parties to the transaction, their respective employments or business, the mode of transacting business in their locality, &c., and in arriving at the conclusion of whether the defendant, through its officers, had reasonable cause to believe the Burns' insolvent, or acting in contemplation of insolvency or not, the jury will decide that question, looking from the stand-point of what would be the proper action in the case of men of ordinary intelligence similarly circumstanced in all respects as to location and place of business, business habits, and ways of dealing and customs of the country, as w*as* the defendants at the time of the giving and receiving of the note of July 9th, 1867.

97 *Answer to def't's points.*

1st. Refused.
2nd. Refused.
3rd. Allowed.
4th. Allowed.

98 J. B. JONES, ASSIGNEE OF W. BURNS, }
vs.
THE FIRST NATIONAL BANK OF CLARION CO. }

Answer by the court to points presented by pl'ff's counsel.

1st. The proposition here stated, when applied to special classes, among wh*en* the punctual discharge of pecuniary engagements is regarded as an essential condition of commercial credit and honor, may perhaps be true; but in its general application, it is subject to material qualification. In its appropriate and commonly accepted sense, insolvency means insufficiency of assets possessed by a debtor to pay his debts. Mere default in payment then ought not to be regarded as the absolute standard by which every debtor's ability to satisfy his liabilities should be measured—suspension of payment of commercial paper, by a

banker, merchant, or trader, must not only be fraudulent, but must continue for fourteen days to *cur*stitute even an act of bankruptcy;
99 and resumption within that period is a condonation. Is it in harmony with the spirit of this provision to invest the mere fact of a failure to pay a debt at maturity, with the significance of insolvency, and thereby deprive the debtor of the control of his assets to discharge any of his indebtedness, unless he paid the whole, although his property might be abundantly sufficient for that purpose? Outside of purely commercial communities, such a construction would not accord either with the ordinary course of business, or the habits and usages of the people. To justify a conclusion of his insolvency, the condition of the debtor ought to be such as to denote his inability to pay, by reason of the disproportion of his liabilities to his assets, and the unava'libility of the latter without unreasonable delay. If the value of his property, computed with reference to its conversion into money, within a reasonable time, is largely in excess of his debts, he is not in a condition of insolvency.

2. Withdrawn.

3. Allowed.

100 4th. The facts here stated imposed upon the bank the duty of careful and thorough inquiring as to the condition of Burns; but they do not, therefore, import reasonable cause for the cashier to believe that Burns was insolvent, or contemplated insolvency. If the cashier instituted such inquiry by availing himself of all the sources of information within his reach, and upon the knowledge so acquired, in good faith, and in the exercise of reasonable intelligence come to the conclusion that Burns was not insolvent, according to the definition given in the answer to the first point, he is not charg'able with reasonable cause of belief that Burns was insolvent or contemplated insolvency. Of the sufficiency of the inquiry, and the soundness of the conclusions, the jury must judge. If they are satisfied that he made a full examination, with an honest purpose to avoid transgression of the law, and that his deduction from the facts gathered by him was not unreasonable, the transaction is to be taken as unimpeachable.

101 5th. A corporation can only act through its appointed officers and agents. Any act done, any obligation assumed, or any knowledge possessed by them, and any conclusion of fact or law deducible from their acts or knowledge, in the time of their appropriate functions, is imputable to the corporation.

For further answer to this point the proceeding answers are refer'ed to.

6th. Allowed.

7th. If when Burns gave the def't the note and warrant of attorney, he was insolvent, or contemplated insolvency, or bankruptcy, and it was given with a view to prefer the def't, he committed an act of bankruptcy. Instruction in reference to the rest of this point has been before asked for and given.

8th. Allowed.

102 Be it remembered that, in the May term, in the year of our Lord one thousand eight hundred and sixty-nine, came Joseph B. Jones, assignee in bankruptcy of W'm Burns, by George Shiras, j'r, his attorney, into the circuit court of the United States, for the western district of Pennsylvania, before the judges thereof, and impleaded the First National Bank of Clarion, a corporation under the general banking laws of the U. S., having its chief place of business at Clarion Penn'a, in a certain plea of trespass on the case, &c., &c.

Whereupon the said plaintiff, by George Shiras, j'r, esq., his attorney, complains for that whereas, heretofore, on the 9th day of July, A. D. 1867, the said W'm Burns being insolvent, with a view to give a preference to the said The First National Bank of Clarion, being then and there a creditor of the firm of S. & W. Burns, whereof he, the said W'm Burns was the surviving partner, did execute and deliver unto
103 the said bank a bond, with warrant to confess a judgment thereon against the said Burns for the sum of ten thousand three hundred dollars; that the said bond was entered and judgement thereon confessed against the said Burns, on the 18th day of July, A. D. 1867, at number one hundred and thirty-two of September term, A. D. 1867, of the court of common pleas of Clarion County, in the State of Pennsylvania, the said W'm Burns being insolvent as aforesaid, and desiring to give a preference over his other creditors to the said The First National Bank of Clarion, procured a large amount of personal property belonging to said Burns, to wit, store-goods and lumber, to the value of twelve thousand dollars, then in the possession of the said Burns, in the county of Clarion, to be seized on an execution sued out upon the said judgment as aforesaid; and the said plaintiff further says that *that* said execution was so proceeded with that the said property so levied on was sold and the proceeds thereof, to the amount of said sum of ten thousand three hundred dollars, were paid over unto
104 and for the benefit of said The First National Bank of Clarion; and the said plaintiff further says, that the First National Bank of Clarion accepted the said bond and warrant to confess judgement thereon as aforesaid, and received the proceeds of such execution, having reasonable cause to believe that said W'm Burns was insolvent, and that the said bond, judgement, e'ecution, and payment thereby received of their claims against said Burns, *and* were made in fraud of the provisions of the act of Congress, approved the 2d day of March, A. D. 1867, and known as the bankrupt act; and the said plaintiff further says that, afterwards, to wit, on the 30th day of July, in 1867, and within four months from the giving of said bond and warrant of attorney by said Burns unto the said defendents as aforesaid, the said W'm Burns filed his petition in the district court of the United States for the western district of Pennsylvania, wherein and whereby the said Burns alleged that he was insolvent and unable to pay his debts, and prayed to be adjudged a bankrupt; and the said plaintiff further says that then and before the said W'm Burns was duly adjudged a bank-
105 rupt and the plaintiff duly appointed his assignee on the 11th day of March, 1867; that a large number of creditors having proven claims to a large amount against the said Burns; that the said plaintiff, in pursurnce of the provision of the said act of Congress, hath demanded from the said defendant, the value of the said property so as aforesaid levied on and sold by the said defendant, in fraud of the provisions of the said act; yet the said defendant hath not yet delivered unto the said plaintiff the said goods or the value thereof, but so to do hath and still doth wholly refuse, to the damage of the plaintiff of fifteen thousand dollars; to recover which and costs he brings this suit.

And the said plaintiff further complains for that whereas, heretofore, to wit, on the 9th day of July A. D. 1867, one W'm Burns, in contemplation of insolvency and with a view to give a preference to the defendant as one of his creditors, the said defendant having reasonable cause to believe that said Burns was insolvent, executed and delivered unto the said defendant a judgment-bond for the sum of ten thousand three hundred dollars, with the design of thereby enabling the

said defendant to seize on execution certain personal property of said Burns, and proving and receiving payment thereby of defendant's said claim against said Burns; and the said plaintiff further says that said judgement was, on the 18th of July, 1867, at No. 132, September term, 1867, of the court of common pleas of Clarion County in said district, entered against said Burns; that process was issued thereon, and a large amount of the property, to wit, store-goods and lumber belonging to said defendant, were seized upon, sold, and the proceeds thereof reecived by said defendant on account of defendant's said claim against said Burns; and plaintiff further says that, afterwards, to wit, on the 30th day of July, 1867, and within the space of four months from and after the said Burns had procured his said property to be seized as aforesaid in execution, he, the said Burns, filed his petition in bankruptcy, and was duly adjudged a bankrupt, and the plaintiff duly appointed his assignee; that it has been the duty of this assignee, under the provisions of the act of Congress, approved March 2d, 1867, and commonly known as the bankrupt act, to receive from said defendant for the benefit of the other creditors of the said Burns the said property so as aforesaid seized and sold on execution, or the value thereof, from the said defendant; yet, the said defendant, though often requested, hath not yet yielded up or paid the amount or any portion thereof, but so to *and* hath & doth wholly refuse, to the damage of the plaintiff fifteen thousand dollars; to recover which and costs he brings this suit.

GEORGE SHIRAS, J'R,
Plaintiff's Attorney.

Whereupon, and after the said plaintiff had complained as hereinbefore recited, came the defendant, the First National Bank of Clarion, & by S. A. & W. S. Purviance, its attorneys, filed the following plea to the declaration of the said plaintiff, that is to say, as follows:

And now, to wit, March 11th, 1869, the said defendant, by S. A. & W. S. Purviance, their attorneys, come and defend the wrong and injury complained of in plaintiff's declaration, and say that judgment should not be given against the defendants, because they deny that the said Burns was on the 9th July, 1867, insolvent, and that being so, and with intent to give a preference to the defendant over other creditors of the said Burns surviving, &c., give to the defendant the note or bond with warrant of attorney to confess judgement, &c., or that the same, to wit, note or bond with power of att'y to confess judgement was so received from said Burns, surviving, &c., with any such knowledge, intent, &c., on part of the defendant; that the said Burns afterwards procured a large lot or any lot of his goods, as specified by plaintiff, or other goods whatsoever, to be levied upon by defendant under the judgment aforesaid and execution thereon, or under any execution or any judgment whatsoever, and to be sold, and the proceeds thereof applied to defendant's said judgment, in fraud of other creditors, and of the provisions of the act of Congress entitled "An act providing for a uniform system of bankruptcy throughout the United States," or with a view to a preference of creditors in favor of the defendants; that the defendant received and that the said Burns gave said note or bond with a view to give defendant a preference, or to defraud other creditors, or in fraud of the act of Congress hereinafter referred to, or that it was so received by defendant, and that defendant had reasonable cause to believe that said Burns, surviving, &c., was insolvent, or that the as-

signee of said Burns, has ever made demand back from the defendant, which is alleged in plaintiff's declaration; and, on the contrary thereof, the defendants aver and allege that they received the said note from said Burns, entered the same, issued upon the same without any knowledge or suspicion that the said Burns was insolvent or in danger of insolvency, and without any collusion with him to defraud other creditors or give the defendant a preference, and without any intent to offend against the provisions of the act of Congress herein before referred to whatsoever; and in this connection, defendants aver & allege that the levy made by them was done against the Burns property without his
110 knowledge and against his wishes, but that after said levy was made, the sale was made of the goods levied upon in the face of a strong opposition from the said Burns; and the said defendants further deny that they ever assumed or were liable to the plaintiff in the manner and form as charged by plaintiff in this suit, or in any way whatsoever, or that the plaintiff had any cause of action against them; and of this the defendants put themselves upon the country.

S. A. & W. S. PURVIANCE,
Defendant's Attorneys.

And afterwards, the plaintiff having filed his declaration as aforesaid, and the defendants having pleaded as aforesaid thereto, it was further so proceeded in *in* said case, on Nov. 21st, 1870, the plaintiff was allowed, on motion of his counsel, made in open court, the following motion:

And now, to wit, Nov. 21, 1870, plaintiff has leave to amend the ad damnum clause in the said counts of this declaration by substituting the amount of thirty thousand dollars for fifteen thousand dollars.

Amendment allowed.

Per curiam.

111 And afterwards the said case was so provided in that, on Nov. 28th, 1870, the plaintiff, by leave of court, was allowed to and did file an amended narr or declaration, to which, by leave of court, defendant pleaded as heretofore stated, and filed on same day an additional plea.

The said amended narr, additional count on part of plaintiff, and the said renewed plea and additional plea on part of defendants, setting forth substantially the same case, and presenting substantially the same issues as were created by the original narr and pleas hereinbefore set forth, as will appear by a reference thereunto. (Prout narr and pleas filed Nov. 28, 1870.)

112 And afterwards, to wit, at a circuit court of the United States in and for the western district of Pennsylvania, held in the city of Pittsburgh, on the 29th day of November, A. D. 1870, before the Honorable W'm McKenna, one of the judges of said court, the aforesaid issues so joined between the said parties aforesaid, came on to be tried before a jury for that purpose duly empannelled; that is to say, W. B. Brown, Augustus Beckert, R. F. Hollay, Josiah McPherrin, J. B. Vance, W'm H. Templeton, W'm A. Mickey, and J. G. Hackney.

At which day came then, as well the said J. B. Jones, assignee of W'm Burns, surviving, &c., as the said The First National Bank of Clarion, by their respective attorneys; and the jurors empanelled to try the said issue being called, also came, and were then and there, in due manner, chosen and sworn to try the said issue; and upon the trial of that issue, the counsel learned in the law for the said J. B. Jones, assignee of W'm Burns, surviving, &c., to maintain and prove the issue on his part gave in evidence.

1st. The record, No. 47, in bankruptcy, for the purpose of showing

113 that a voluntary application was made in bankruptcy by the said W'm Burns, surviving, &c., and the appointment in said proceedings of the said J. B. Jones, as assignee, the date of the filing of said petition being July 30th, 1867.

2nd. Judgment-note for $10,300.00, dated July 9th, 1867, executed by said Burns, surviving, &c., in favor of the First National Bank of Clarion.

3rd. A note dated Pittsburgh, March 16th, 1867, for $5,000, made by S. & W. Burns, endorsed Graham & Thomas, James Kennedy.

4th. A note dated Corsica, April 6th, 1867, for $5,000, made by S. & W. Burns, endorsed Graham & Thomas, James Kennedy.

5th. Exemplification record from court of common pleas of Clarion County, Penna., No. 132, Sept. term, 1867, showing entry of judgment on July 18, 1867, First National Bank of Clarion vs. Burns, surviving, &c., on the note of July 9th, 1867.

6th. F. fa. No. 38, Dec. term, 1867, common pleas Clarion County, and vend. ex. and sale of realty of Burns, surviving, &c., situated in Clarion County.

7th. Exemplification record No. 185, May term, 1867, common pleas Jefferson County, &c., on that fi. fa. No. 4, Dec. term, 1867, common
114 pleas Jefferson County, Pa., with a return of sale and appropriation of the money made thereon.

Vide exemplifications.

And, further to maintain the issue on his behalf, the plaintiff called as witnesses on his behalf, W'm Burns, Reese Thomas, M. B. Lourie Childs, John Carrin, C. B. M. Smith, Ely Crawford, Charles Neale, James McClellan, W'm Henry Nathan Carrin, S. P. McElroy.

And, further to maintain the issue on his behalf, gave in evidence a certain note known and spoken of as the James P. Tanner note, which was produced by C. B. M. Smith, a witness called by plaintiff, and was dated May 3d, 1867. (Vide note.)

And also the record of the deed of assignment of the register in bankruptcy (of Burns' estate) to James B. Jones, dated Nov. 29th, 1867.

115 All of which testimony so offered by plaintiff through his counsel was given for the purpose of showing and tended to show that the said W'm Burns, surviving, &c., was insolvent, or in contemplation of bankruptcy and insolvency at the time he executed the note of July 9th, 1867, to the defendant for $10,300.00; that the said defendant had then, and when they entered up said judgment-note, reasonable cause to believe or suspect the said W'm Burns of insolvency or bankruptcy, and that the goods and property levied on and sold on the judgment so entered up, were of greater value than they actually sold for under and at the sheriff's sales; and wholly tending to prove and maintain the issue on the part of the plaintiff.

116 And the said plaintiff, by his counsel, proposed to ask Nathan Carrier, a witness produced by him, & who it was in evidence was the sheriff of Jefferson County, Penn'a, and who had conducted the sale of the property, real and personal, of said Wm. Burns, situate in Clarion County, Penn'a, and within the bailiwick of the said Nathan Carrier, sheriff aforesaid, the question as follows:

"The plaintiff's counsel proposed to ask the witness, who has testified that he was the sheriff of Jefferson County who sold the store-goods and cut lumber of S. & W. Burns, on a writ in his hands, the actual value of such goods and lumber, in his opinion."

To which question the defendants, by their counsel, then & there objected, and assigned as a reason therefore the following:

"Objected to because incompetent, and because of the plaintiff not being permitted to go (that is to say in a recovery, if any,) beyond the amount for which the property sold at sheriff's sale."

Which objection, after argument thereon, the court overruled and admitted the said evidence on the part of the plaintiff.

Whereupon defendant's counsel asked for a bill of exceptions
117 to the said ruling of said court, which said bill of exceptions was accordingly signed and sealed by the said Hon. W'm McKenna, judge of said court, and ordered to be made a part of the record in said case.

And the said plaintiff further proposed to ask the said Nathan Carrin, a witness, &c., as follows:

"The plaintiff proposes further to ask the foregoing witness, who has testified that he sold pieces of real estate belonging to S. & W. Burns on writs in his hands, what it (they) brought at said sales, and whether, in his opinion, it (they) brought all it was worth."

To which questions defendants, by their counsel, then and there objected, as follows:

"Objected to as incompetent—first, because the judgments and writ of fi. fa., as being the best evidence, should be produced; and, 2nd, because it is an offer to prove value of property some six months after the note of 9th July, 1867, was given."

Whereupon, after argument, the court overruled the said objec-
118 tion and admitted said evidence; and thereupon defendant's counsel asked for a bill of exceptions to the said ruling of the said court; which said bill of exception was accordingly signed and sealed by the said Hon. W'm McKennan, judge of said court, and is ordered to be made a part of the record in said case.

The defendant, the First National Bank of Clarion, to maintain the issue on their part, called as witnesses:

George W. Arnold, Theodore S. Wilson, W'm Burns, Samuel Wilson, & Reese Thomas, who gave testimony tending to prove that the said W'm Burns, surviving, &c., was not insolvent or in contemplation of bankruptcy and insolvency, at the time he executed the note of July 9th, 1867, for $10,300, with power to enter judgment thereon to the First National Bank of Clarion; that the First National Bank of Clarion had not then, and when they received and entered up said note reasonable cause to believe or suspect the said W'm Burns of insolvency, or as being in contemplation of bankruptcy and insol-
119 vency, and that the receipt of said note by the said bank, and their subsequent action thereon, was not in controvention of any of the provisions of the bankrupt act, and generally tending to prove and maintain the issues on the part of the defendants.

And the said defendants, by their counsel, propose to ask one of the witnesses produced, and sworn upon their behalf, to wit:

George W. Arnold, who, it was in evidence, was the cashier, and acting business manager of the defendants at their place of business in Clarion, Pa., the following proposition, to wit:

"Defendants propose to prove by the witness that requests, and the necessity for requests on the part of lumbermen for temporary extensions from their creditors was frequent, by reason of difficulties of getting their timber, &c., to market, and that such action on part ot lumbermen did not excite or tend to excite any suspicion whatever of the previous solvency of the party in the lumber country."

To which offer of the defendants, the plaintiff's counsel then and

120 there objected, on the ground that the same was irrelevant, and incompetent; and thereupon the court did sustain the objection of the plaintiff's counsel to the said proposition, and refused to allow the defendant to prove the matter and things stated in his said offer; whereupon the defendants asked for a bill of exceptions to the ruling of the court upon the said proposition; which said bill was accordingly signed and sealed by the said Hon. W'm McKennan, judge of said court, and ordered to be made a part of the record in said case.

And the said defendants, by their counsel, during the examination of W'm Burns, a witness produced by them, and who had been examined and called as a witness by the plaintiff, and who was the same W'm Burns of whom J. B. Jones was the assignee in bankruptcy, propose to prove by the said witness, W'm Burns:

"That the issueing of the execution and the entry of the judgment was a surprise to and wholly unexpected by him, and that from the time he was first apprised of it he opposed the bank in both judgment and execution, and endeavored to have the original judgment opened.

121 To which offer of the defendants the plaintiff's counsel then and there objected as irrelevant and incompetent.

And thereupon the court did, after argument, in part admit and in part reject said offer of defendants, and did say:

"The first part of the offer is rejected, but the defendants may show what the witness did in opposition to the enforcement of the judgment and execution."

To which ruling of the court the defendants did then and there, by their counsel, except; did ask thereon for a bill of exceptions, which said bill was accordingly signed and sealed by the said Hon. W'm McKennan, judge of said court, and ordered to be made a part of the record in said case.

And the said defendants further, by their counsel, during the examination of W'm Burns, a witness &c., as aforesaid, propose to prove:

"That upon the entry of confession of judgment by the Clarion Bank, in Jefferson County, and issueing of execution, he, the witness,

122 came down to Pttsburgh, consulted his Pittsburgh creditors and notified them of the state of affairs; and that, at their instance, he went into voluntary bankruptcy, they and he believing that in some way or other, under the provisions of the bankrupt law, then new to all, the execution and all proceedings thereon might be set aside; that it was a part of the agreement and understanding of the witness and the creditors that the proceedings in bankruptcy were (if they were successful in defeating the bank executions) to be then suspended by arrangement and withdrawn, and the witness to be allowed to resume possession of his mill, &c., and an extension given him and [this offer] to be accompanied by proof that from and after the issueing of the bank's execution the defendant, Burns, fought and opposed the same."

To which offer of the defendants the plaintiff's counsel then and there objected as irrelevant and incompetent.

Whereupon the court did, after argument thereon, sustain the objection of plaintiff's counsel and did reject the evidence proposed; and thereupon defendant's counsel asked for a bill of exceptions to the

123 ruling of the court thereon; which said bill of exceptions was accordingly signed & sealed by the said Hon. W'm McKennan, judge of said court, and ordered to be made a part of the record in said case.

And the evidence being closed on the part of the plaintiff and of the

defendants the counsel for the plaintiff then and there, and before the said judge commenced his summing up and charge to the jury, presented to said judge certain points of law in writing as being applicable to said case and requested the said judge to charge the jury in accordance therewith; which points are as follows:

That every one is presumed to intend that which is the necessary and unavoidable consequence of his acts, and therefore when W'm Burns signed and delivered to the defendants in this case the judgment-note dated July 9th, 1867, payable one day after date, giving to the defendants the right to enter the same of record and issue execution thereon without delay, for a debt which was not then due, it
124 affords the strongest grounds for the presumption that the debtor intend[ed] to give to his creditors a preference, and that the said creditor intended to obtain such preference, thereby enabling him to make his money on execution before any other creditor could interfere; and that in such case it is wholly immaterial whether the preference was voluntary on the part of the debtor or given at the urgent solicitation of the preferred creditor.

(This was the plaintiff's third point.)

Whereupon the said judge did then and there charge the jury, as above requested, and did instruct the jury with reference to said point, as follows:

"Allowed."

The plaintiff's counsel also requested the said judge to further instruct the jury that, if the jury find that the quantity and value of the assets of the said Burns had not materially diminished from July 9th, 1867, when the judgment-note was given, till July 30th, when he filed his petition in bankruptcy, and September 9th, when he was adjudi-
125 cated a bankrupt, on his own petition, they may find that he was insolvent on the said 9th day of July.

(This was the plaintiff's sixth point.)

Whereupon the said judge did then and there charge the jury, as above requested, and did instruct the jury with reference to said point, as follows:

"Allowed."

The plaintiff's counsel also requested the said judge to further instruct the jury:

That the measure of damages is the value of the property seized and sold by virtue of the execution issued on the judgment confessed on said judgment-note in the counties of Clarion and Jefferson.

(This was the plaintiff's eighth point.)

Whereupon the said judge did then and there charge the jury, as above requested, and did instruct the jury with reference to said point, as follows:

"Allowed."

126 And the counsel for the defendants then and there also presented to said judge certain points of law, in writing, as being applicable to said case, and requested the said judge to charge the jury in accordance therewith, which points are as follows:

In this case plaintiff must recover (if at all) under the provisions of the 35th or 39th section of the bankrupt act, as the bankrupt, whose assignee sues in this case, to wit, S. & W. Burns, were not so adjudicated in an adverse proceeding in bankruptcy presented by their petitioning creditors, but went into bankruptcy voluntarily. The 39th section does not apply to this case, and as the 35th section does not specify, among the acts it exhibits, as does the 39th section, "the giving any

warrant to confess judgment," no recovery can be had under that section, and the verdict of the jury must be for the defendant.

But the said judge, having read said point to the jury, instead of charging, as so requested, did instruct the jury thereon as follows:

"Refused."

127 The defendant's counsel also requested the said judge further to instruct the jury:

That while under the bankrupt act this court has the right (and by virtue of its process and orders reaching the parties themselves, when they reside within the jurisdiction of the court, or their agent and attorneys, when they live out of the jurisdiction,) to restrain the further action of parties litigant in cases arising under and referred to by the act, from further proceedings in said case during the pendency of the same, and while they are yet undetermined in the State courts, that is to say, while the said cases are yet without judgment, execution sale of defendant's property, and distribution of proceeds, and while this court has the right and power to restrain proceedings on unfair securities, when given in fraud of the bankrupt act, whether of record or not of record; yet this court has not the right or power to, and will not take jurisdiction in a suit of this kind, when the judgment of a State court has been perfected by levy or sale and distribution of proceeds

128 of sale of a defendant's property among the lien creditors of a defendant, entitled by virtue of their liens under State courts to receive distribution.

But the said judge having read said point to the jury, instead of charging, as so requested, did refuse the said point and did instruct the jury thereon as follows:

"Refused."

Whereupon the counsel for the said defendants did then and there, on behalf of the said defendants, the First National Bank of Clarion, except to the aforesaid opinion and charge of the said judge to the jury, and to the instructions so given to them in reply to the aforesaid three points, (to wit, the third, sixth, and eighth,) made by the plaintiffs, and in reply to the aforesaid two points, (to wit, first & second,) made by the said defendant's counsel as aforesaid; and then and there insisted that the said judge was in error in instructing the jury as he did, in answer to the aforesaid three points made by the plaintiff's counsel as aforesaid, and that the two points so made by the de-

129 fendant's counsel as aforesaid, were correct in law, and that the said judge ought so to instruct the jury as requested by defendants' counsel; and that under the law as set forth in said two points so as aforesaid made by the defendant's counsel, the plaintiff ought not to recover against the defendants in said action; and the said judge having delivered his opinion to the jury aforesaid, and with that direction and under the ruling hereinbefore set forth as to the admission of evidence and the points presented and made respectively by the counsel for the plaintiff and for the defendants, left the same to the jury. The jury aforesaid then and there, to wit, on the day of , A. D. 1870, gave their verdict for the said plaintiff and found for him fifteen thousand five hundred and fifty-seven dollars and ten cents, ($15,557.10,) as damages. And inasmuch as the several matters aforesaid in the bill of exceptions contained, and on the part of the counsel for said defendants objected and insisted, do not appear by the record of the verdict aforesaid, the said counsel did then and there prepare their afore-

130 said exceptions to the several rulings, charges, and opinions of the said judge, and requested him to put his seal to this bill of

exceptions; and thereupon the said judge, at the request of the said counsel for the said defendants, The First National Bank of Clarion, hath put his seal to this bill of exceptions, the fourth day of November, A. D. 1871.

W. McKENNAN,
Circuit Judge, 3rd Circuit.

131 The jury in the case of J. B. Jones, assignee in bankruptcy of William Burns, vs. First National Bank of Clarion, find for plaintiff (15,557.10) fifteen thousand five hundred and fifty-seven dollars and ten cents.

132 Know all men by these presents that we, The First National Bank of Clarion, and Theophalis Wilson, Jake Hill, and Griswold S. Warner, are held and firmly bound unto Joseph B. Jones, assignee of William Burns, surviving partner of S. and W. Burns, in the just and full sum of thirty thousand dollars, to be paid to the said Joseph B. Jones, assignee, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy:

Whereas lately, at a session of the circuit court of the United States for the western district of Pennsylvania, in a suit depending in said court between Joseph B. Jones, assignee of W. Burns, surviving partner of S. and W. Burns, and the First National Bank of Clarion, judgment was rendered against the said First National Bank of Clarion, and the said First National Bank of Clarion, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Joseph B. Jones, assignee, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the Monday of next:

Now, the condition of the above obligation is such, that if the said First National Bank of Clarion, shall prosecute the said writ of error to effect, and answer all damages and costs if they fail to make their
133 plea good, then the above obligation to be void; else to be and remain in full force and virtue.

SAMUEL WILSON,
President of the Bank.
THEOPHILUS S. WILSON. [SEAL.]
JAKE HILL. [SEAL.]
GRISWOLD S. WARNER. [SEAL.]

Sealed and delivered in the presence of—
A. A. ADAMS.
W. S. MILLER.

134 (Indorsed:) No. 2. May T., 1869.
Feb'y 24, 1871. Bond & security approved.
W. McKENNAN, *Cir. J.*

Filed Feb'y 24, 1871.

135 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the western district of Pennsylvani', greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Joseph B. Jones, assignee in bankruptcy of W'm Burns, plaintiff, and The First National Bank of Clarion, defendant, a manifest error hath happened, to the great damage of the said defendants, as by this complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, District of Columbia, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the
136 laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States Supreme Court, this 24th day of February, A. D. 1871.

[SEAL.] H. D. GAMBLE,
Clerk U. S. Circuit Court.

Allowed by

W. McKENNAN, *Cir. Judge.*

137 UNITED STATES OF AMERICA,
Western District of Pennsylvania, set.:

To J. B. Jones, assignee of W'm Burns, surviving partner of S. & W. Burns, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, wherein The First National Bank of Clarion, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 27th day of November, A. D. 1871.

W. McKENNAN,
Judge of U. S. Circuit Court.

138 (Indorsed:) No. . term, 18 . The First National Bank of Clarion vs. J. B. Jones, assignee of S. & W. Burns. Citation.

And now, Nov. 27, 1871, service accepted for def'ts.

GEO. SHIRAS, J'R,
Of Counsel for Plaintiff now Def's in Error.

139 In the circuit court of the United States for the western district of Pennsylvania.

JOSEPH B. JONES, ASSIGNEE IN BANKRUPTCY of William Burns,
vs.
THE FIRST NATIONAL BANK OF CLARION. } No. 2. May term, 1869.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this day of A. D. 1871.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble, above-named, was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate, made by him, is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *Nov. 1st*, 1871.

(Indorsement on cover:) No. 331. The First National Bank of Clarion, plaintiff in error, vs. Joseph B. Jones, assignee of William Burns, bankrupt. W. Pennsylvania C. C. U. S. Filed 15th January, 1872.

REC. 331—4

In the Circuit Court of the United States for the Western District of Pennsylvania.

JOSEPH B. JONES, Assignee in Bankruptcy of William Burns,
vs.
THE FIRST NATIONAL BANK OF CLARION.

No 2, May Term, 1869.

DOCKET ENTRIES.

1870, December 7th, motion for new trial filed.

And now, December 7th, 1870, the motion for a new trial in the above case came on to be heard, and was argued by counsel *pro* and *con*, and the Court being fully advised in the premises, the motion is overruled and judgment directed to be entered upon the verdict.

Same day, judgment upon the verdict for the sum of fifteen thousand five hundred and fifty-seven dollars and ten cents ($15,557.10), with interest from the 3d day of December, 1870.

United States of America,
Western District of Pennsylvania, } *ss.*

I, H. D. Gamble, Clerk of the Circuit Court for said District, do hereby certify, that the motion for a new trial was argued and overruled, and judgment directed to be entered upon the verdict as before stated, and that in making up the record in this case for the Supreme Court of the United States, the above entries were omitted.

In testimony whereof I have hereunto signed my name this 28th day of March, A. D. 1874.

H. D. GAMBLE,
Clerk.

Western District of Pennsylvania, *ss.*

I, H. D. Gamble, Clerk of the Circuit Court of the United States, for the said District, do hereby certify that the annexed and foregoing pages contain a true copy from record and proceedings in

the above entitled case, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court, at Pittsburgh, this 28th day of March, A. D. 1874.

[L. S.]

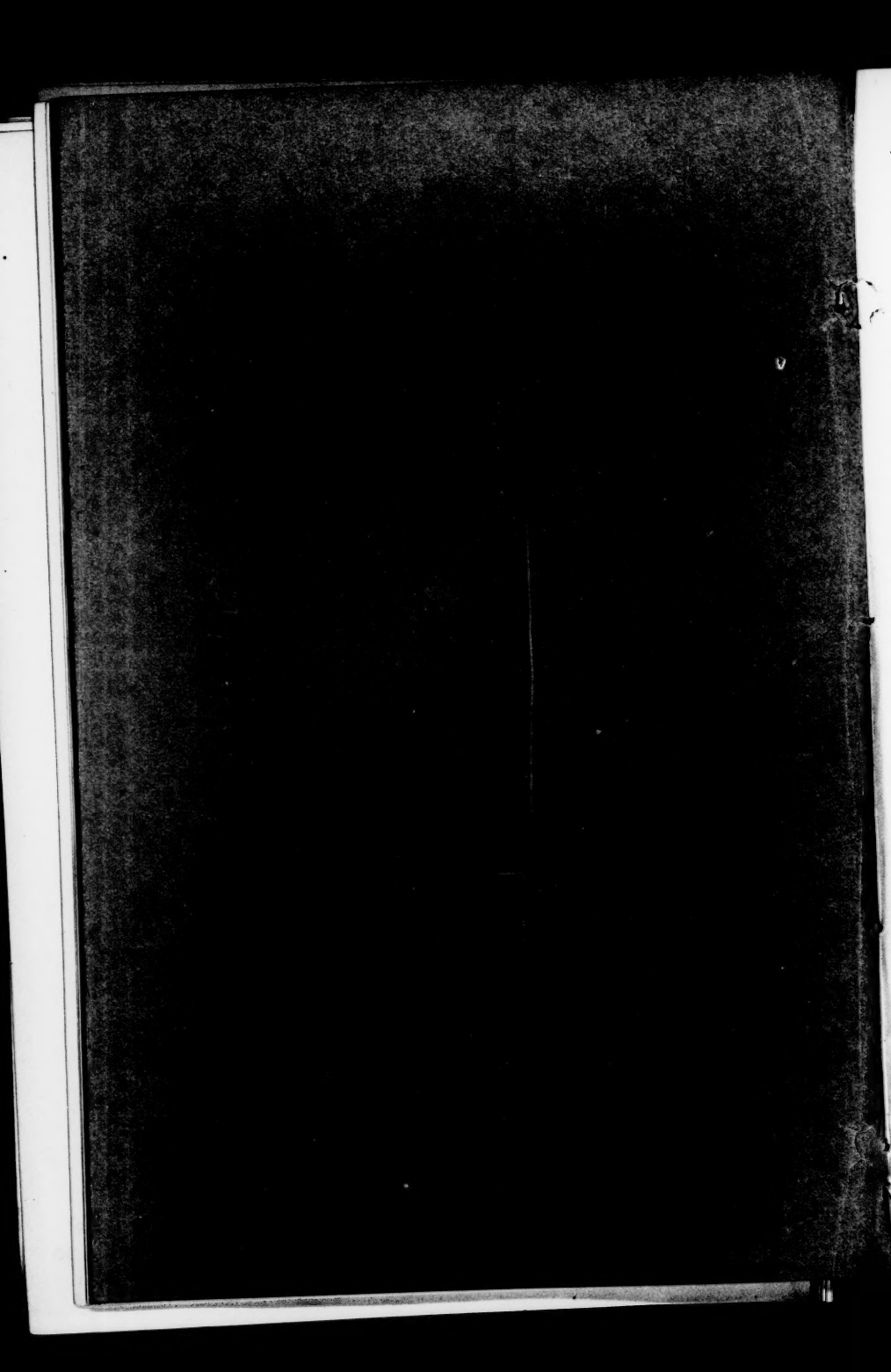
H. D. GAMBLE,
Clerk.

Western District of Pennsylvania, *ss.*

I, William McKennan, Judge of the United States Circuit Court for said District, do hereby certify that A. D. Gamble above named, was, at the time of making the above certificate, and is now, Clerk of said Court, and that the said certificate made by him is in due form of law.

W. MCKENNAN,
U. S. Circuit Judge.

PITTSBURGH, March 28, 1874.



NATIONAL BANK OF CLARION,
vs.
JONES, ASSIGNEE OF BURNS.

This suit was brought in the Circuit Court for the Western District of Penn'a, by the deft. in error, Jones, as Assignee of Wm. Burns, a bankrupt, to recover from the First National Bank of Clarion the value of certain property which the Bank had taken and sold under an execution issued by it against Burns out of the Court of Common Pleas of Jefferson Co., Penn'a.

The material averments of the plaintiff's declaration as amended, (see Record p 5) are:

1. That Burns gave the Bank a judgment note for a debt of $10,300.

2. Judgment was entered thereon in Clarion county, and afterwards an exemplification of the record was taken and entered in the Common Pleas of Jefferson.

3. That Burns *suffered or procured process* to be issued out of the Common Pleas of Jefferson, and thereupon a large amount of his property was seized and the proceeds thereof received by the Bank on account of its claim against Burns.

4. That within four months after he procured or suffered the seizure he filed his petition and was adjudicated a bankrupt.

5. That Burns was insolvent at the time he gave the note, with warrant of attorney to confess judgment, and did it with a view to give a preference to the Clarion Bank.

6. That the Clarion Bank accepted the said judgment and received the proceeds of the execution, having reasonable cause to believe that Burns was insolvent.

7. That the judgment, exemplification, execution and payment of proceeds on the Bank's claim were all in fraud of the bankrupt act.

The value of the property taken under the execution is not set forth in the declaration, nor is it declared that any action to recover it hath accrued by operation of the Bankrupt law; but the plaintiff avers that the facts above stated made it *his duty* to recover the *property* seized, *or the value thereof*, and concludes as in trespass on the case for a tort, to the damage of the plaintiff thirty thousand dollars.

The defendant's plea is *not guilty*, and it specially traverses every fact in the declaration, except the judgment note, the execution and levy. It denies the knowledge of the defendant that Burns was insolvent, or contemplated bankruptcy, denies all intent to defraud other creditors, by accepting a preference, denies that Burns procured his goods to be levied upon, and on the contrary avers that the judgment was taken in good faith, without knowledge or suspicion that Burns was insolvent, and the execution and levy so far from being procured by Burns, were issued and made without his knowledge, and against his wishes.

HISTORY OF THE CASE.

S. & W. Burns were lumbermen and merchants, doing business as partners, in the county of Jefferson. They became indebted to the Clarion Bank in the sum of $10,000, the Bank having discounted their two notes for $5,000 each. The one note was due July 16–19, and the other August 6–9.

On the 9th of July, one of the partners having died, the officers of the Bank insisted upon a change of the security, and the surviving partner, yielding to their importunity, gave the Bank an acknowledgment of the debt coupled with a warrant of attorney to confess payment for the debt and costs. (Rec. p. 10.)

On the 18th of July, the judgment was entered up in Clarion county, under the warrant of attorney authorizing it, and by exemplification it was transferred to Jefferson, where Burns lives, and had his property and business. (Rec. p. 10 et sequ.)

On the 19th of July the attorney of the Bank filed his precipe for a *fieri facias*, which was probably issued on the same day or the next day, for on the 22d of July the Sheriff of Jefferson county had the writ in his hands and made a levy on Burns' goods. The property levied on remained in the Sheriff's hands, unsold, for want of time to do so before the return day of the writ. (Rec. p. 18.)

To the next term afterwards a Venditioni Exponas was issued, under which the Sheriff sold the goods and paid the Bank $9,359.56. The balance of the debt and costs was afterwards made by a sale of land in Clarion county.

On the 30th of July, 1867, Burns filed his petition for the benefit of the Bankrupt law in the District Court of the U. S. for the Western District of Penn'a, sitting at Pittsburg. (Rec. p. 31.)

Upon this petition he was adjudged a bankrupt by the District Court on the 9th day of September, 1867. (Rec. p. 28.)

His property was assigned by the Register in Bankruptcy to James B. Jones, the plaintiff, on the 29th of November, 1867. (Rec. p. 31.)

This suit to recover back from the Clarion Bank the debt which it has collected from Burns, the bankrupt, was brought Jan. 6, 1869. (Rec. p. 1.)

The case came on for trial on the 28th of November, 1870, before Judge McKennon and a jury.

The record sets forth the evidence very imperfectly, but it appears plainly enough that the plaintiff produced sundry witnesses who gave evidence tending to show that Burns was insolvent when he gave the judgment note, and that the defendant had reasonable cause to believe or *suspect him of insolvency*. (Rec. p. 34.)

On the other hand the defendant produced witnesses to show, and their testimony tended to prove, that at the date of the judgment and afterwards when it was entered of record the debtor (Burns,) was not insolvent, that he did not then contemplate insolvency or bankruptcy, and that the defendant had no reasonable cause to believe or suspect him of being insolvent. (Rec. p. 34.)

As the evidence is not given at length, but only the character and tendency of it, we are not permitted to say on which side the preponderance was relative to the fact of Burns' insolvency. But there is one thing about it from which we think the inference a fair one, that he was not insolvent. It is this: Jones, the plaintiff, was appointed assignee of this estate on the 29th of November, 1867, just three years before the trial. If he performed his duty as we presume he did, he must have had in his hands the documentary proofs of its exact value as well as the precise amount of the debts. By producing these he could have put an end in one moment to all possible controversy about Burns' financial condition. But he withheld them. Why? The logic of the law says because he knew they would contradict his allegations.

Nor does any fact appear which amounts to a scintilla of proof that the defendant knew him to be insolvent. Of course the Bank could not *know* him to be insolvent and could not have any reasonable cause to *believe* him insolvent if in point of fact he was *not* insolvent.

That in truth he was not insolvent in the true sense of the word is further shown by the effort which the plaintiff made in the Court below and here to infer it from the facts that he was embarrassed, had not money to pay his debts as they matured, and asked an extension of time from his creditors—all which had no tendency to prove insolvency. (See Brief of deft. in error, page 2.)

But the important question of fact was whether the debtor *procured* his personal property to be seized under the execution. If the seizure was not made *by his procurement* with a fraudulent design on his own part to deprive the other creditors of their proper share of his assets; then it was a plain violation of the bankrupt law to let the plaintiff below recover. No matter when or how the judgment was obtained, and no matter whether the Bank knew Burns to be insolvent or not, the assignee had no cause of action without proving Burns' active procurement of the levy and sale for the purpose of cheating the body of his creditors. We think we can show this by the words of the statute, by the highest judicial authority, and by the reason of the thing.

The plaintiff did not prove such procurement, but the Court charged the jury in effect that he might recover without proving it, and on other grounds which as we shall show were wholly insufficient.

But that was not the worst, or nearly the worst injustice done to the defendant. Burns, the debtor, was called by the plaintiff, but the plaintiff did not ask him whether he had himself procured the seizure of his goods, or whether he had connived or assented to it, or whether he had given the judgment with the intent or expectation that it should be followed by an execution and levy. When his testimony had gone as far as the plaintiff wished without touching this important point, the defendant proposed to prove affirmatively by the same witness that the seizure, so far from being procured by him was a surprise upon him and wholly unexpected—that as soon as he learned what use was going to be made of the warrants of attorney which he had given, he opposed the whole proceeding and endeavored to have the judgment opened.

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This evidence so directly tending to clear up all doubts about the most material fact in issue was objected to as irrelevant and incompetent, and the objection was sustained as to the main part of the offer. The Court ruled out so much of the evidence as would have shown that there was no collusion or concert between the debtor and the defendant, and consequently no procurement of the seizure by the debtor, but consented to receive proof of the acts which he did in opposition to it. It somewhat surprises us to find that, after this, the Court rejected all evidence of the debtor's *acts* in opposition to the execution and levy. But see what followed as you find it recorded on the same page of the record (p. 36.)

The defendant offered to prove by Burns, that from and after the issuing of the Bank's execution, he fought and opposed it; that as soon as the judgment was transferred to Jefferson county, whence an execution upon it could reach his personal property, and immediately after the actual issuing of the execution, he went to Pittsburg, saw his creditors there, told them what had happened, and consulted them about it; that he petitioned, as a bankrupt, at their instance, for the purpose of defeating the Bank's execution, and with a pre-arranged understanding between him and them that when his petition should serve that purpose, as they believed it would, all proceedings under it should be suspended and withdrawn, he should be restored to the possession of his property, and time given him to pay his debts.

This, we think, made out a complete defence. But all was rejected as irrelevant and incompetent. The Clarion Bank was convicted of a fraud upon the other creditors of Burns, in the face of the fact that those other creditors of Burns conspired to use the bankrupt law as a fraud upon the Bank.

The whole charge of the Court, as well as all its rulings in the course of the trial, proceeded upon a misconception of the Bankrupt law. The error we complain of was undoubtedly shared by many of the Circuit Judges—by none, however, of greater learning and ability than Judge McKennon himself. But it is an error nevertheless, and it produced in this case a judgment most unjust and oppressive.

We intend to maintain if we can the following propositions:

1. A creditor may take from his debtor one security for his debt, as well as another—a judgment note as well as a promissory note—a single bill under seal as well as a bond—and in any case a proper use of the remedies which the law of the State puts into his hands is no fraud upon the bankrupt law.

2. Where the creditor institutes proceedings for the recovery of his just debt in the State Court, and obtains a judgment which is a lien upon the debtor's land, or takes out an execution or issues an attachment, which is a lien upon his personal property, the debtor cannot divest such lien or defeat the legal rights of the creditor by afterwards applying for the bankrupt law. All liens legally acquired for just debts, at any time before the petition, are and ought to be respected by the bankrupt law, and by the courts which administer it. And this is true even where the debtor was known to be insolvent when the judgment was rendered or the security given on which it was obtained.

3. The acceptance of a warrant of attorney to confess judgment by a creditor from a debtor known to be insolvent is not in itself a fraud upon other creditors; nor is it made an offence against the bankrupt law. The 39th section simply declares it to be an act of bankruptcy on the part of the debtor, but does not enumerate the acceptance of it among the acts which a creditor is forbidden to do under the penalty of losing his debt.

4. The only legal ground of recovery that could exist in this case was that the debtor *procured* the seizure of his personal property under the execution issued by the Bank in violation of the 35th section.

5. To justify a recovery under the 35th section it was necessary to show that the debtor wilfully and actively engaged in getting the seizure made with the fraudulent intent to pay the debt to the Bank out of property which ought to be devoted equally to all his creditors alike, and that the creditor knowing, or having good cause to believe him insolvent, took advantage of his fraud and made himself a party to it by accepting its fruits

6. If the debtor opposed the levy—tried his utmost to prevent it—was wholly unwilling that his property should be taken by one creditor while the others were left unpaid—if the execution was sprung upon him by surprise, and he fought the levy and sale until every expedient of opposition was exhausted—it is unreasonable to say that he fraudulently procured the seizure to be made—and equally unreasonable to allege that the Bank could have united with him in a fraud which he never committed.

7. If Burns, the debtor, conspired with the Pittsburgh creditors to petition under the bankrupt law, not in good faith, for the purpose of being discharged, but merely as a means of defeating the rights of the Clarion Bank, then the petition and the proceedings under it were a fraud upon this defendant, which takes away all title from the assignee to recover in this action either for the use of the debtor or the creditors.

Our specific assignments of error are the following:

The Court erred:

1. In charging the jury as requested by plaintiff in his third point. (See p. 37 of the printed record.)

2. In charging as requested by plaintiff on his sixth point. (See same p.)

3. In charging the jury as requested by the plaintiff in his eighth point. (See same p.)

4. In refusing to charge as requested by the defendant in the points presented by him as set forth in the Bill of Exceptions and printed partly on p. 37 and partly on p. 38 of the record.

5. In permitting the plaintiff to give evidence of the value of property sold for the purpose of swelling the verdict beyond the amount made out of it and paid to the Bank. (See p. 35 of the record.)

6. In rejecting the offer of the defendant to prove by Burns that he did not procure the execution to be issued or the seizure to be made, but that it was a surprise to him and wholly unexpected by him. (See p. 36 Rec.)

7. In rejecting the offer of the defendant to prove by Burns that he opposed the Bank's execution—and fought it, instead of procuring the levy and seizure under it—that he went to Pittsburg to notify his creditors and consult them about it—that at their instance he went into voluntary bankruptcy, believing as they did, that by doing so he could set aside the Bank's execution—that he did this under an agreement that when the Bank's execution was defeated by the proceeding in bankruptcy it should be suspended or withdrawn with their consent and the debtor reinstated in the possession of his property.

J. S. BLACK,
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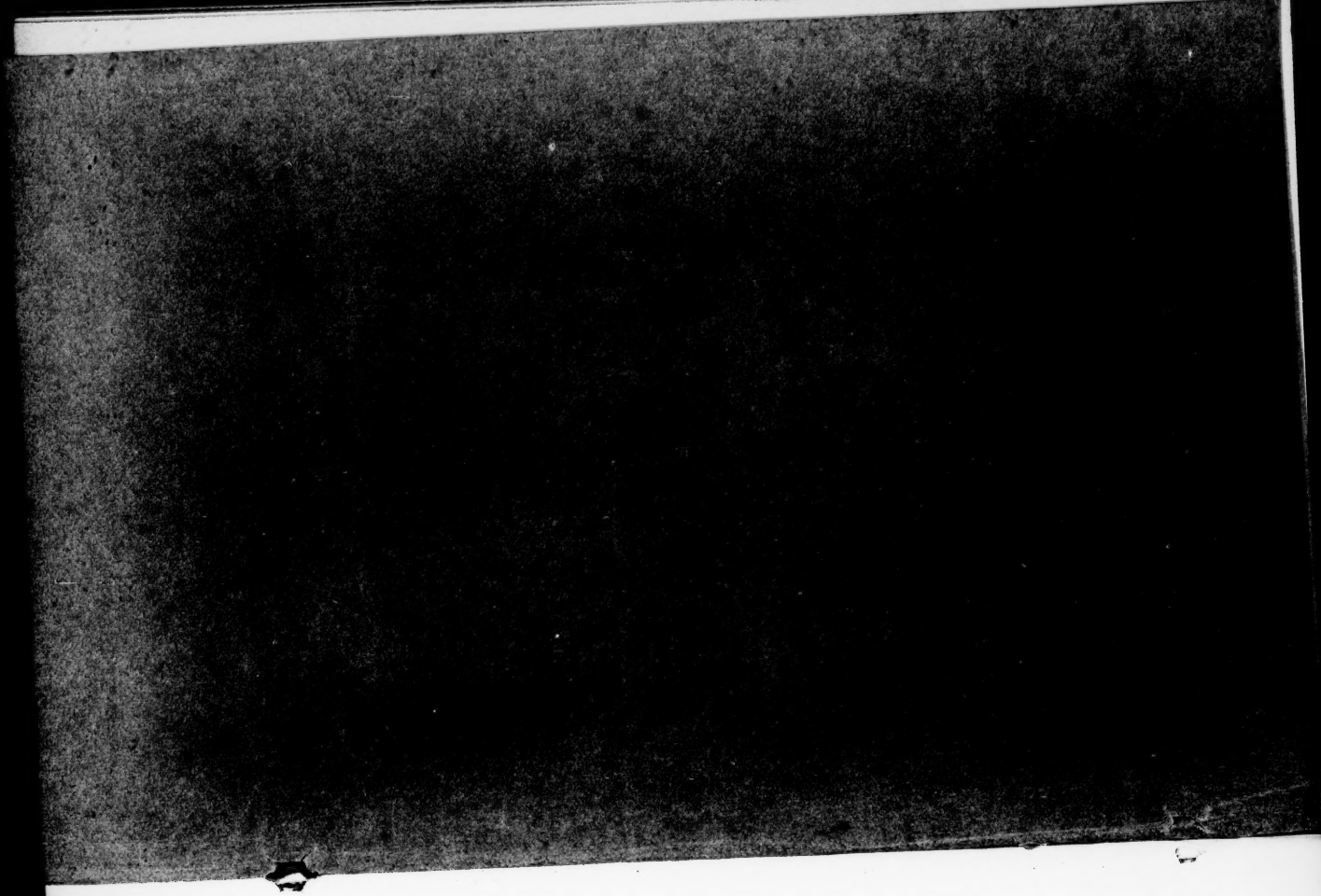

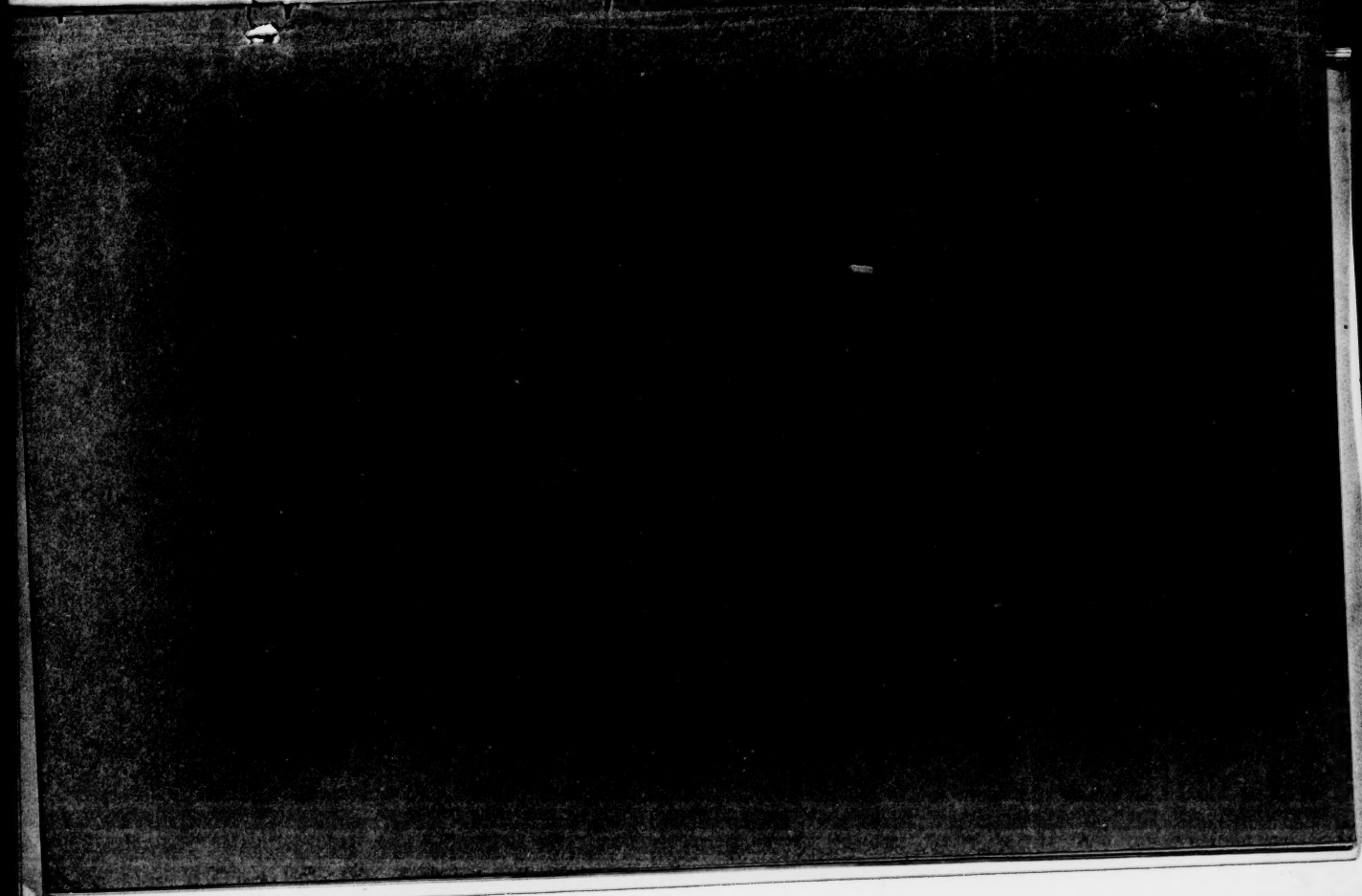

The FIRST NATIONAL BANK of Clarion, plaintiff in error,
vs.
JOSEPH B. JONES, Assignee of Bankruptcy of WILLIAM BURNS, defendant in error.

This writ was brought in the Circuit Court of the United States, Western District of Pennsylvania, and tried before Judge McKennon and a jury.

The cause of action as set forth in the Plaintiffs declaration, (see page 31 Record,) is that the Bank being a creditor of William Burns, and Burns being insolvent on the 9th July, 1867, gave the Bank a bond with warrant of attorney, to confess judgment for $10,300, the amount of the debt with a view to prefer that creditor. Judgment being entered on bond, Burns procured personal property to be seized on execution issued at the suit of the Bank—property sold, money made and paid to the Bank ($10,300). The bond judgment execution and payment of money to the Bank were in fraud of the Bankrupt Law, under which Burns on the 30th July, 1867, petitioned to be discharged as a bankrupt. This is substantially the first count.

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The second count charges the same acts of Burns and the bank, but qualifies them by the statements that the judgment was given by Burns, *with a design of enabling* the bank to levy on his property and also, that the bank *had reasonable cause to believe* that Burns was insolvent. Within four months after the time Burns procured his goods to be seized, he petitioned under the act of 1867 and became an adjudicated bankrupt.

The plea traverses every fact in both counts of the declaration. (Rec. p. 32.)

The declaration and the points made by the plaintiff—the evidence given by him and his objections to the evidence offered by the defendant—all show the plaintiffs theory to have been that the confession of a judgement, to a creditor is one of the acts denounced in the Bankrupt Law as fraudulent, and a sufficient ground of action for the assignee to recover on. This view was adopted by the court, and in consequence, the plaintiff, got a verdict for $15.000, without proof of any other act done by the bank in concert with the debtor, except that of taking a judgment by confession for a debt admitted by all parties to be honest.

See Record, page 37, where the judge allowed the plaintiff's point which wholly refers to the delivery of the judgment note upon the 9th of July, 1867, and gives that as ground of presumption that the debtor at that time intended to give a preference to the bank.

See also on the same page the reference to the same act and the same date, July 9th, 1867, as the time when the debtor was insolvent.

The court was requested by the defendant's counsel, (see page 37) to charge that the 39th section of the Bankrupt act did not apply to this case and that nothing was contained in the 35th section concerning a warrant to confess judgment and that therefore the verdict ought to be for the defendant; but the judge refused to charge according to this request, or to give any other explanation of the Act of Congress, thereby virtually affirming that both sections did apply to the present case, and that by one or the other of them the act complained of in the plaintiff's declaration and the only act proved to have been done by the debtor, viz: the giving of the judgment note on the 9th of July, 1867 was a fraud upon the other creditors upon which the assignee could sustain his action against the bank to recover back, not only the money paid to him in satisfaction of his debt, but the value of the property sold under the execution.

We submit that in all this the court committed a cardinal error. The 39th section has no application whatever to a case of this kind. Burns was not adjudicated a bankrupt upon the petition of his creditors but upon his own petition. This was a case of voluntary bankruptcy, and the 39th section applies wholly to cases of involuntary bankrupts. But that section does not make the giving of a warrant to confess judgment an offence upon which under any circumstances whatever the assignee can maintain an action like this. To accept such a warrant to enter it up to issue execution upon it and to collect the amount of it is not made an offence at all. The 39th section enumerates the acts of the debtor which shall be regarded as acts of bankruptcy and among other things to be so regarded is the giving of a warrant to confess judgment, but is is nowhere said, that the acceptance of such a warrant or the exercise of any right which the warrant gives, shall subject the creditor to an action by the assignee. The acts which may have that effect, are enumerated separately in the last sentence of the section where it is declared that the assignee may recover back money or other property *paid, conveyed, sold, assigned or transferred* to a creditor who receives it, having reason at the time to believe that the debtor intended thereby to commit a fraud. The statute having said that the assignee may recover for these causes unpliedly declares that he shall not recover for any other cause. *Expressio unius exclusio est alterius.*

We maintain that if any person engaged in business shall give a warrant to confess judgement, his creditors may, at anytime, within six months afterwards, petition the court to declare him a bankrupt, and upon showing the fact that he gave such a warrant, he may be adjudicated a bankrupt. And this is true whether judgment be entered upon the warrant or not, nor does it make any difference, whether execution be issued or not. The naked act of giving such a warrant is an act of bankruptcy, but it is nothing more that that. It is not a fraud upon the law, any more than protesting a note.

But the 35th section does apply to this case. It denounces certain acts of a bankrupt debtor as fraudulent and authorizes a recovery from the creditor who has colluded with the debtor in committing them, but among the acts so denoun-

ced as fraudulent confessing a judgment, or giving a warrant to confess judgment, is not included If he procures any part of his property to be attached, sequestered or seized in execution, or makes any payment pledge, assignment, transfer or conveyance of any part of his property, such seizure, payment sale, pledge assignment, transfer or conveyance, shall be void and the assignee may recover the property or the value of it, from the person receiving it or benefitted by it, if it be proved that he did the act with a view to give a preference to one creditor over others, and if the creditor benefitted thereby had reasonable cause to believe that the debtor was insolvent and acting fraudulently. In this case Burns is charged with having fraudulently procured the seizure of a part of his property under an execution issued by the Bank, and no particle of evidence was given or offered which proved or tended to prove anything like it.

The plaintiff seems to have relied for proof of the fraudulent procurement of the seizure solely upon the evidence that he gave a warrant to confess judgment and the court seems to have regarded that as sufficient to prove all the allegations in the declaration. It must be apparent to the Court that the act of confessing judgment whether by warrant of attorney or otherwise and the act of fraudulently procuring a seizure of his property in execution, are as distinct as two things can possibly be. To say that a man must necessarily have done one because he did the other is preposterous.

To recover under the 35th, Sec., it was manifestly necessary for the plaintiff to show:

1. That Burns was insolvent or contemplated insolvency.
2. That he desired to give the Bank of Clarion a preference over his other creditors, that is, to deprive the latter of their proper share of his assets, by giving the Bank more than it would get, upon a fair division, under the bankrupt law.
3. That in order to perpetrate this fraud, he *procured* his property to be seized under an execution of the bank, so as to put it beyond the reach of his other creditors.

4. That having succeeded in this fraud, he afterwards, within four months, filed his petition to be declared a bankrupt.

5. That the Bank of Clarion had reasonable cause, to believe, that he was insolvent, and, that he was *procuring* the seizure in fraud of the bankrupt law.

6 That notwithstanding the reasonable cause which the bank had to beleve in the corrupt intent of the debtor, it suffered him to procure the fraudulent seizure, and took the benefit of it.

7. That Burns was the active party in procuring the seizure—that the fraud was his, and that the guilt of the bank consisted in taking the fruits of the wrong, which it knew him to be doing.

It is not only clear that all these points were to be proved but equally clear that the judgment was not in question at all, and could not be exhibited, unless as a mere circumstance incidentally tending to show the character of the seizure. Whether the judgment was obtained by concession or in an adversary proceeding —whether it was obtained six months or six years before—whether it was regular or irregular—all these were of no consequence—the question being whether the seizure of the goods was fraudulently procured by the debtor.

This brings us to the court's rejection of our evidence.

We offered to prove that the execution and seizure of the property was not procured by him at all much less that it was fraudulently procured—that the writ was issued and the levy made, not only without his procurement, but in hostility to his wishes and contrary to his expectations—that he opposed the execution and did all he could to stop it; that he tried to get the judgment opened; that he went to Pittsburg to see the body of his creditors and concert measures with them to defeat it—that it was at their instance he petitioned under the bankrupt law, intending his petition solely as a means of defeating the Bank's execution. And all this directly tending to make clear the real issue between the parties was rejected and the cause went to the jury on testimony utterly irrelevant. A judgment most unjust was the necessary consequence of this ruling.

Our specific assignments of error are the following:

The court erred:

1. In charging the jury as requested by plaintiff in his third point. (See p. 37 of the printed record.)

2. In charging as requested by plaintiff on his 6th point. (See same p.)

3. In charging the jury as requested by the plaintiff in his 8th point. (See same p.)

4. In refusing to charge as requested by the defendant in the points presented by him as set forth in the Bill of Exceptions and printed partly on p. 37 and partly on p. 38 of the record.

5. In permitting the plaintiff to give evidence of the value of property sold for the purpose of swelling the verdict beyond the amount made out of it and paid to the Bank. (See p. 35, of the recard.)

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J. Black

Counsel for Plff in Error

IN THE

SUPREME COURT OF THE UNITED STATES.

No. **Term, 187**

THE FIRST NATIONAL BANK OF CLARION,

Plaintiff in Error,

vs.

BURNS' ASSIGNEE.

DEFENDANT'S BRIEF.

GEO. SHIRAS, JR.,

Of Counsel for Defendant in Error.

STEVENSON & FOSTER, PRINT. PITTSBURGH.

IN THE

Supreme Court of the United States.

No. *Term, 187*

Error to the Circuit Court of the United States for the Western District of Pennsylvania.

THE FIRST NATIONAL BANK OF CLARION, Plaintiff in Error and Defendant below,

vs.

JONES, Assignee of Burns.

This was an action by an assignee in bankruptcy, under the 35th section of the Bankrupt Act, to recover from the defendant below the value of certain property seized and sold on execution, in disregard of the provisions of the said section.

Three errors are assigned to the action of the court below. The first has to do with the definition of the term "insolvency." The definition adopted by the court was consistent with

the terms of the statute, and is almost identical with a definition that received the approval of this court in Toof vs. Martin, 13 Wallace, p. 47. The same definition was given by Judge Dillon in the case of Wilson, assignee, vs. City Bank, 6 Bankruptcy Reg., 274. The jury were told that a trader is insolvent, within the meaning of the bankrupt act, when he is unable to pay his debts, as they mature in the ordinary course of his business.

The strictest definition of insolvency, usually obtaining in commercial circles, was not applied below, as it well might have been. The evidence disclosed that the bankrupt, Burns, was wholly without money with which to meet his maturing obligations—that before confessing the judgment in favor of the defendant, he had called a meeting of his creditors, and had endeavored to procure an extension, and that the officers of the defendant (bank) had knowledge of these facts before they obtained and entered up the judgment. The business of Burns was that of a lumber merchant, and he also kept a large country store.

Error is likewise assigned to the action of the court in refusing to charge that a previous alleged understanding between Burns and the defendant, that the former would execute and deliver to the latter a judgment bond, if and whenever the bank should become dissatisfied with the endorsers furnished by Burns, would remove the case from the category of the 35th section. The mere statement of the proposition seems its sufficient refutation. A statute forbidding an insolvent debtor to grant a preference cannot be evaded by showing that an agreement subsisted, between the debtor and his creditor, that such preference should be given whenever the latter should deem his other securities insufficient.

The third and last assignment raises the question of the measure of damages.

It was contended, on behalf of the defendant, that the plaintiff had no right to receive beyond the amount of the proceeds of the sheriff's sale—that the amount so realized was conclusive as to the value of the property levied on and sold.

The court treated the sheriff's return as merely *prima facie* evidence of such value, and permitted the plaintiff to show that the property was really worth more than it sold for. It was in evidence, that the defendant was a purchaser of no inconsiderable portion of the property sold. But, at all events, the action of the court is justified by the language and reason of the statute, and by a recent decision of this court.

The language of the Act is "the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefitted." This seems to give an option to the assignee to recover either the property in specie, or the value of it. If the property is perishable, or has been deteriorated by use, or has gone into the possession of third and innocent parties, in all these cases, the assignee might, rightfully, demand the value of the property.

Although a sheriff's sale, it was really controlled and conducted by the defendant, and the court gave the utmost reasonable effect to the proceedings, when it instructed the jury that the sheriff's return of sale would fix the value of the property, until and unless the plaintiff should affirmatively show that the real value exceeded the amount realized by the sale.

This rule of damages was, in effect, adopted and approved by the court in the late case of Marshall *vs.* Knox, American Law Register, October, 1873. In that case the defendants

were held accountable for the "full value of the property, whether they realized that value or not."

It is evident that any other construction would lead to a very ready and a very mischievous method of evading the most vital and useful provision of the Bankrupt Act.

GEORGE SHIRAS, JR.,
Counsel for Defendant in Error.